

ALABAMA LAWS
(and Joint Resolutions)
OF THE
LEGISLATURE OF ALABAMA
PASSED AT THE
SECOND SPECIAL SESSION, 1992

VOL. 1



GUY HUNT, Governor
JIM FOLSOM, JR., Lieutenant Governor
RYAN deGRAFFENRIED, President Pro-Tem of the Senate
JAMES S. CLARK, Speaker of the House
JAMES M. CAMPBELL, Speaker Pro-Tem of the House
McDOWELL LEE, Secretary of the Senate
GREG PAPPAS, Clerk of the House

WITH AN INDEX PREPARED BY THE
LEGISLATIVE REFERENCE SERVICE

The undersigned, as Secretary of State of the State of Alabama, does hereby certify that this book contains bills and joint resolutions enacted at the 1992 Second Special Session of the Legislature of Alabama and is the official publication of such acts.

Billy Joe Camp
Secretary of State

Good laws lead to the making of better ones; bad ones bring about worse. As soon as any man says of the affairs of the State 'What does it matter to me?' the State may be given up for lost.

Jean Jacques Rousseau
Social Contract

The public's right to know about their government's activities is a sacred one protected by the United States Constitution, the Alabama Constitution, and the Code of Alabama.

But that right carries a responsibility. If citizens do not actively participate in and monitor the business of government, then as the eighteenth-century French philosopher Rousseau pointed out, the very existence of the free state is in jeopardy.

In keeping with that belief, Alabama law requires that the Secretary of State publish and make available all the acts of the Alabama Legislature. Contained within this volume are the acts passed in the 1992 Second Special Session.

Many people worked to make this volume possible including McDowell Lee, Secretary of the Senate; Greg Pappas, Clerk of the House of Representatives; Joyce Bishop and Julie Saint, enrolling and engrossing clerks; Dodie Pappanastos, Helen Thorington, and Ina Clay, technical proofreaders; Dannie Shockley, Recording Secretary for the Governor; Jerry L. Bassett, Director of the Legislative Reference Service; and Hannah M. Bates and Rosemary Judkins of the Office of the Secretary of State.

Freedom's best protection is an informed citizenship; therefore, we take pride in making these new laws accessible to you.

Billy Joe Camp
Secretary of State

ALABAMA LAWS
And Joint Resolutions
SECOND SPECIAL SESSION, 1992

Act No. 92-627

S.J.R. 5 – Senators Mitchell, Amari, Bailey, Barron, Bedsole, Bennett, Bolling, Campbell, Corbett, deGraffenried, Denton, Dial, Dixon, Ellis, Figures, Floyd, Foshee, Ghee, Hale, Hilliard, Horn, Langford, Lindsey, Lipscomb, Little, Mitchem, Owens, Parsons, Sanders, B. Smith, J. Smith, Waggoner, Wilson and Windom

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF BILLY ATKINS.

WHEREAS, it is with deep sorrow and regret that the Legislature of Alabama records the death of Billy Atkins in November 1991; and

WHEREAS, a former head football coach at Troy State University (TSU), Billy Atkins served in this capacity from 1966 to 1971, during which tenure school records were set by his teams that are yet to be broken; and

WHEREAS, it was Coach Atkins who coached the first national championship team in the history of Troy State University, and his 1968 team is remembered as one of TSU's finest;

WHEREAS, Coach Atkins, during this period, built Trojan football into a program that was competitive with the best, and the TSU brilliant passing game and wide-open offense set the stage for the records that still stand at Troy State University; and

WHEREAS, more importantly, however, was his representation of TSU with class and dignity, and his commitment to excellence, an attribute he imparted to his players and one which held them in good stead throughout their lives; and

WHEREAS, Coach Billy Atkins, of Troy State University, was indeed a man of sterling character, great warmth and concern for others, and his lamentable death has left an unfathomable void in the life and heart of the community; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are deeply saddened by the death of Coach Billy Atkins and extend deepest sympathy to all his family, for whom a copy of this resolution shall be provided.

Approved September 23, 1992

Time: 1:30 P.M.

Act No. 92-628 S.J.R. 6 – Senators Bennett, Waggoner and Amari
SENATE JOINT RESOLUTION

COMMENDING HOMEWOOD MAYOR ROBERT G. WALDROP FOR 24 YEARS OF LEADERSHIP.

WHEREAS, Homewood Mayor Robert G. Waldrop will officially retire from office October 5, 1992, after 24 years of outstanding leadership and public service; and

WHEREAS, under Mayor Waldrop's guidance, Homewood has undergone tremendous growth and progress, including the establishment of one of Alabama's premier local school systems; and

WHEREAS, during his time in office, Mayor Waldrop has received many honors and awards, including election as president of the Jefferson County Mayor's Association in 1972 and president of the Alabama League of Municipalities in 1976, and presently serves as president of the Alabama Municipal Workmen's Compensation Fund, Inc.; and

WHEREAS, Mayor Waldrop was named by the Shades Valley Civitans as the Outstanding Citizen of Homewood in 1970 and was honored by the Homewood Board of Education which named the high school football stadium the "Robert G. Waldrop Stadium" in 1976; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That Mayor Robert G. Waldrop is hereby commended for 24 years of dedicated service to the residents of Homewood in which time the state's 17th largest municipality experienced extraordinary growth.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to Mayor Waldrop with the Legislature's gratitude and best wishes for the future.

Approved September 23, 1992

Time: 1:32 P.M.

Act No. 92-629

S.J.R. 7 – Senator Little

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF JERRY SHREVE FARROW.

WHEREAS, it is with deep and abiding sorrow that the Legislature of Alabama records the death of Jerry Shreve Farrow of Alexander City, Alabama, on August 26, 1992; and

WHEREAS, a native of Andalusia and a graduate of Huntingdon College, she also earned a master's degree at Troy State University and completed graduate studies at both the University of Alabama and Auburn University; and

WHEREAS, Mrs. Farrow, an outstanding educator who had taught at Dadeville High School and at A. G. Parrish High School in Selma, was a highly regarded teacher of mathematics with the Alexander City School System for a number of years; respected by her peers and revered by her students, she was widely known for her ability to motivate and inspire her students to excel, and for her special talent for making mathematics more meaningful in relation to other academic course work and the arts; and

WHEREAS, she further was a prominent community leader through activities in a number of civic groups in Alexander City, and had served as organist at both the First Methodist and First Baptist Churches; and

WHEREAS, Mrs. Farrow, the wife of Dr. Charles A. Farrow, vice president and academic dean of Central Alabama Community College, is survived also by her son, Ben Farrow; mother, Merle Lowman Shreve; brother, William Shreve; and by other family members, all of whom are sorely bereft in their great and grievous loss; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are deeply saddened by the death of Jerry Shreve Farrow of Alexander City, Alabama, and extend our most heartfelt sympathy to her family,

for whom a copy of this resolution of sincere condolence shall be provided.

Approved September 23, 1992

Time: 1:34 P.M.

Act No. 92-630

S.J.R. 8 – Senator J. Smith

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF JOHN CASIMIR PIERZALA OF HUNTSVILLE, ALABAMA.

WHEREAS, it is with deepest regret that the Legislature of Alabama records the death of John Casimir Pierzala of Huntsville, Alabama, on November 7, 1991, at the age of 72 years; and

WHEREAS, a familiar front-row figure in Council Chambers at City Hall on Thursday nights, John Pierzala became known as the scrappy, outspoken citizens' advocate in matters of local government, and left an indelible mark on the city he loved; and

WHEREAS, born and raised on Chicago's west side, the son of Polish immigrants, the sharp-tongued conservative met with the City Council with regularity, questioning, challenging, and defending issues of public concern; and

WHEREAS, he will be missed and remembered by many for it has been said that John Pierzala was the people's voice, representing the inclusion of citizens in the governmental process, and that his input helped the process work; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we deeply mourn the loss of John Casimir Pierzala and extend sincere sympathy to his devoted wife, Marion, and other family members, for whom a copy of this resolution shall be provided.

Approved September 23, 1992

Time: 1:36 P.M.

Act No. 92-631

H.J.R. 66 – Reps. Kennedy, Buskey (JE), Zoghby

HOUSE JOINT RESOLUTION

MOURNING THE DEATH OF MATTIE AUGUSTA WILLIAMS MITCHELL OF MOBILE, ALABAMA.

WHEREAS, it is with a deep sense of sorrow and loss that the Alabama Legislature records the lamentable death of Mattie Augusta Williams Mitchell of Mobile, Alabama, on September 22, 1992, at the age of 96 years; and

WHEREAS, born to Silas James Williams and Sarah James Williams, she became the adopted daughter of Andrew Boykin and, at an early age, accepted Christ as her Savior and united with the Metropolitan A.M.E. Zion Church; and

WHEREAS, Sister Mitchell was the oldest member, by age, of Hope Chapel A.M.E. Zion Church and was a member for 75 years of the Good Samaritan Society #2 prior to its dispersion; and

WHEREAS, a noble lady whose life stood as a testament to her deep and abiding faith, she will be sorely missed by her beloved family and by all those whose lives she touched in genuine love and concern; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That even as we mourn her death, we give thanks for the life of Mattie Augusta Williams Mitchell and extend our deepest and most heartfelt sympathy to her children, Silas Mitchell, Sr., Nina James and Laura Ann Mitchell; to her four loving grandchildren, one devoted, Larry James Williams, six great grandchildren, one great great grandchild; and to other family members for whom a copy of this resolution shall be provided.

Approved September 24, 1992

Time: 4:25 P.M.

Act No. 92-632

H.J.R. 7 – Reps. Penry, McMillan

HOUSE JOINT RESOLUTION

COMMENDING VICTOR GUARISCO FOR DISTINGUISHED SERVICE TO THE CITY OF DAPHNE.

WHEREAS, over the past 40 years, Victor Guarisco has served the City of Daphne with loyal dedication and devotion; and

WHEREAS, appointed to fill an unexpired term as councilman on April 22, 1952, Mr. Guarisco was subsequently elected to the position the following October and, for the next 24 years, served six terms as a councilman for the City of Daphne; and

WHEREAS, Mr. Guarisco who became the City's fourth mayor in 1976, has most ably served in this capacity for 16 years, but has

chosen not to seek reelection for the October 1992-October 1996 term; and

WHEREAS, during his tenure in office, Mayor Guarisco contributed significantly toward improving the quality of life for the community and the people he served; among many notable accomplishments, he was instrumental in the purchase of the Lake Forest Utility Corporation in 1985, in the successful annexation of property in north Daphne to Highway I-10, and in the acquisition of a public pier at May Day Park; now therefore,

BE IT RESOLVED BY THE THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of his long and distinguished career in public service to the City of Daphne, Alabama, we hereby most highly commend Victor Guarisco, and do further direct that a copy of this resolution be provided for appropriate presentation to one of our state's most prominent elected officials.

Approved September 29, 1992

Time: 6:01 P.M.

Act No. 92-633

H.J.R. 27 – Reps. Buskey (JE), Kennedy

HOUSE JOINT RESOLUTION

MOURNING THE DEATH OF WILSON A. MITCHELL OF MOBILE, ALABAMA.

WHEREAS, it is with a sense of deep sorrow that the Legislature of Alabama records the tragic and untimely death of Wilson A. Mitchell of Mobile, Alabama, on August 29, 1992, at the age of just 42 years; and

WHEREAS, Mr. Mitchell, who died as a result of injuries sustained in an automobile accident, was a lifelong resident of Mobile and a resource officer for the Mobile County Public School System; and

WHEREAS, a highly regarded member of his community, Mr. Mitchell was a member of Revelation Missionary Baptist Church, Jack and Jill, Inc., and Omega Psi Phi Fraternity, Inc.; he also was president of Midnight Mystic Club, and a member of a number of other civic and community organizations; and

WHEREAS, the lamentable death of Wilson A. Mitchell has indeed left an unfathomable void in the life of the Mobile community, and in the hearts of his beloved family and many, many friends; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are grievously saddened by the death of Wilson A. Mitchell of Mobile, Alabama, and extend our very deepest sympathy to his wife and son, Mrs. Ramona Mitchell and Steven Ladell Mitchell; to his sisters and brother, Vivian Gamble, Shirley Williams, Jacqueline Jackson and John Mitchell; and to other family members, for whom a copy of this resolution of sincere condolence shall be provided.

Approved September 29, 1992

Time: 6:02 P.M.

Act No. 92-634

H.J.R. 28 – Rep. Butler

HOUSE JOINT RESOLUTION

COMMENDING CHRISTINE RAY RICHARD OF HUNTSVILLE, ALABAMA, FOR OUTSTANDING SERVICE TO THE COMMUNITY.

WHEREAS, a native of Mississippi, and a resident of Huntsville since 1951, Christine Richard received her B.S. degree from what is now Mississippi University for Women and began a career as a teacher and librarian, working also to further educational foundation programs; and

WHEREAS, after moving to Huntsville with her husband, Ludie, Mrs. Richard worked as a placement officer and employee counselor for the government, and also assumed a leadership role in community service and support; and

WHEREAS, Mrs. Richard, over the past 40 years, has indeed significantly influenced the civic and cultural life of the Huntsville community through her work with the Girl Scouts, as a founding member of the Huntsville Group Home for Girls, and in dedicated leadership and service to First United Methodist Church, CASA, Randolph School, the Huntsville Mental Health Association, the Huntsville Museum of Art and the Huntsville Symphony Orchestra Guild, among untold other organizations; and

WHEREAS, over the years, Mrs. Richard has received numerous accolades and awards, including the first Von Braun Civic Center Award, the James Record Humanitarian Award, and the Huntsville Mental Health Association Distinguished Service

Award; she also has been honored by the American Association of University Women with the designation of the Christine Ray Richard Fellowship Award, and was recognized as a National Girl Scouts' "Hidden Heroine" and as a recipient of the "Thanks" badge; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in tribute to outstanding community service and contributions to the Huntsville community, we hereby most highly commend Mrs. Christine Ray Richard, whom we hold in highest personal regard and for whom a copy of this resolution shall be provided.

Approved September 29, 1992

Time: 6:03 P.M.

Act No. 92-635

H.J.R. 29 – Rep. Cosby

HOUSE JOINT RESOLUTION

COMMENDING THE MATH TEAM OF MORGAN ACADEMY OF SELMA, ALABAMA, FOR OUTSTANDING ACHIEVEMENT.

WHEREAS, the Legislature of Alabama most highly commends and congratulates the math team of Morgan Academy as a top winner in the Alabama Independent School Association's District 5 Math Contest; and

WHEREAS, Morgan Academy, under the able leadership of sponsor Larry Highsmith, took second place honors in the competitive district meet; the winning team members were second high scorer, Jennifer Williamson, along with Jamie Thomas, Ashley Delp, Jennifer Kinard, Jay Dellinger and Jason Bearden; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding achievement, we hereby most highly commend the math team of Morgan Academy of Selma, Alabama, as a top winner in District 5 math competition of the Alabama Independent School Association.

BE IT FURTHER RESOLVED, That a copy of this resolution be provided for Dr. Christopher deBuzna, Headmaster at Morgan Academy, for appropriate presentation and display.

Approved September 29, 1992

Time: 6:04 P.M.

Act No. 92-636

H.J.R. 30 – Rep. Cosby

HOUSE JOINT RESOLUTION

COMMENDING THE MATH TEAM OF MEADOWVIEW CHRISTIAN OF SELMA, ALABAMA, FOR OUTSTANDING ACHIEVEMENT.

WHEREAS, the Legislature of Alabama most highly commends and congratulates the math team of Meadowview Christian as top winner in the Alabama Independent School Association's District 5 Math Contest; and

WHEREAS, Meadowview Christian, under the able leadership of sponsor, Kitty Williamson, took first place honors in the competitive district meet; the winning team members were high scorer Heather Bruner, along with Wendy Speed, Jenny Barton, Ashley Hale, Shonna Loftin and Bo Byrd; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding achievement, we hereby most highly commend the math team of Meadowview Christian of Selma, Alabama, as top winner in District 5 math competition of the Alabama Independent School Association.

BE IT FURTHER RESOLVED, That a copy of this resolution be provided for Dr. William Housley, Headmaster at Meadowview Academy, for appropriate presentation and display.

Approved September 29, 1992

Time: 6:05 P.M.

Act No. 92-637

H.J.R. 31 – Rep. Cosby

HOUSE JOINT RESOLUTION

COMMENDING HAROLD FREDERICK BARTON FOR DISTINGUISHED SERVICE WITH THE ALABAMA DEPARTMENT OF PUBLIC SAFETY, 1963-1992.

WHEREAS, it is with highest commendation that the Alabama Legislature commends Harold Frederick Barton of Selma, Alabama, for invaluable service to the Department of Public Safety and the State of Alabama; and

WHEREAS, Lieutenant "Sonny" Barton's distinguished career began in June 1963 as a State Trooper Cadet in Grove Hill and,

through successive promotions thereafter, he rose rapidly through the ranks to Lieutenant and Assistant Troop Commander of the Selma Highway Patrol, his position at retirement; and

WHEREAS, in addition to Grove Hill, Lieutenant Barton also was assigned to posts in Demopolis and Atmore, prior to being transferred in June 1968 to Selma, where he has since remained, serving as Post Commander of the Selma Post, Deputy Director of the Alabama Criminal Justice Training Center, and as Assistant Troop Commander, among other positions; and

WHEREAS, Lieutenant Barton, who is a graduate of numerous law enforcement schools, including the Southern Police Institute at the University of Louisville, has compiled an impeccable record of service during his more than 29 years with the Department of Public Safety, and has thereby earned the highest regard of his professional peers, and the gratitude of the people of Alabama; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding service to the Department of Public Safety, we hereby commend Lieutenant "Sonny" Barton of Selma, Alabama, for whom copies of this resolution shall be provided that he and his wife, Charlotte Barton, and his daughters, Jennifer and Belinda, may know of our sincere praise of such an exemplary public servant who has long and well served the State of Alabama and all citizens thereof.

Approved September 29, 1992

Time: 6:06 P.M.

Act No. 92-638

H.J.R. 32 – Rep. Hammett

HOUSE JOINT RESOLUTION

NAMING "VETERANS MEMORIAL PARKWAY" IN OPP, ALABAMA.

WHEREAS, by unanimous vote of Opp Post 6622 Veterans of Foreign Wars, a resolution has been passed that a portion of U. S. Highway 331 in Opp, Alabama, heretofore undesignated, be named in tribute to our military veterans who honorably served their country, including many who were prisoners of war, and as a memorial to those who paid the supreme sacrifice; and

WHEREAS, said resolution was further adopted and approved by the Mayor and City Council of Opp; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That the portion of U. S. Highway 331 in Opp, Alabama, between Hart Avenue and Cooks Bridge over Lake Frank Jackson, is hereby named and designated, and shall be dedicated, as "Veterans Memorial Parkway."

BE IT FURTHER RESOLVED, That the proper officials are authorized to erect and maintain appropriate signs and markers, so designating said portion of U. S. Highway 331 as "Veterans Memorial Parkway."

Approved September 29, 1992

Time: 6:07 P.M.

Act No. 92-639

H.J.R. 33 – Reps. Venable, Mikell, Clay

HOUSE JOINT RESOLUTION

NAMING "TUKABATCHEE ROAD" IN ELMORE COUNTY AND MACON COUNTY, ALABAMA.

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby name and designate that portion of Alabama Highway 229 South in Elmore County and Macon County, from the intersection of Elmore County Road 4 to the I-85 interchange at Milstead, as the "Tukabatchee Road."

BE IT FURTHER RESOLVED, That the proper authorities are herein authorized to erect and maintain appropriate signs and markers identifying said highway portion as "Tuckabatchee Road."

Approved September 29, 1992

Time: 6:08 P.M.

Act No. 92-640

H.J.R. 34 – Rep. Gaston

HOUSE JOINT RESOLUTION

MOURNING THE DEATH OF BARRY MAXWELL CLARK, A VALIANT AMERICAN PATRIOT.

WHEREAS, it is with deep and abiding grief that the Legislature of Alabama records the death of Barry Maxwell Clark, a brave and stalwart son of Alabama who, at the age of just 26

years, was killed in action on January 31, 1991, in the service of his country; and

WHEREAS, an extraordinarily fine young man, Barry Clark was educated in the public schools of Columbia, Mississippi; Columbia Academy in Columbia, Mississippi; University Military School in Mobile, Alabama; Scarbrough Middle School, Mobile; and at Mobile's John F. Shaw High School where he graduated with the Class of 1983; and

WHEREAS, during his school years, Barry Clark was involved in numerous scholastic and extracurricular activities including the UMC Glee Club, football and band at Scarbrough Middle School, and at Shaw High School, was a member of the Drama Club and the "Pride of Mobile" Band under Sirmon Lee and David Duit, achieving such distinctions as Band Officer, "Most Outstanding Bandsman"; All-State Band for two years, as well as Solo and Ensemble competition; and

WHEREAS, in community activities and achievement, he was a handbell soloist at many churches and for numerous weddings; was a tuba soloist; bass guitarist with the "Harvest" religious musical group; participated in church youth and choir activities; and, as a very versatile and talented musician, played seven different musical instruments; and

WHEREAS, following graduation from Shaw High School, young Barry Clark attended the University of Southern Mississippi in Hattiesburg, Mississippi, where he was an assistant to the Minister of Music at Main Street Baptist Church, and also attended Mobile Baptist College in Mobile; in answer to God's call to the Music Ministry, he trained in this field until circumstances and obligations interrupted his education; and

WHEREAS, Barry Clark joined the United States Air Force on August 2, 1985, in Montgomery, Alabama; he then completed basic training, served as a ground crewman with the F-15 Fighter Squadron, Eglin AFB, Florida, and then as aerial; gunner with the 16th Special Operations Squadron at Hurlbert Field, Florida, at the time his unit was deployed to the Persian Gulf during Operation Desert Shield/Desert Storm; and

WHEREAS, on January 31, 1991, at 2:16 a.m., Barry and 13 other crewmen departed King Fahd International Airport aboard an AC-130-H Spectre Gunship, call sign "Spirit 03" and commanded by Major Paul J. Weaver, on a combat mission over Northeast Saudi Arabia and Southeast Kuwait; at 5:45 a.m., "Spirit 03" was tasked to attack Free Rocket Over Ground (FROG) missiles by the Marine Direct Air Support Center; at 6:19 a.m., Airborne Early Warning and Control System (AWACS) personnel directed

Spirit 03 to return to base and Spirit 03 acknowledged; at 6:24 a.m., AWACS heard a weak mayday and, upon receiving no reply to a radio check with Spirit 03, immediately began Search and Rescue efforts which proved unsuccessful; and

WHEREAS, on March 4, 1991, following the liberation of Kuwait, search crews located a crash site one-half mile off the coast in the Persian Gulf near the Kuwait-Saudi Arabia border and, on March 5, 1991, a dive team confirmed this to be the wreckage of "Spirit 03," and concluded that there were no survivors; and

WHEREAS, while attempting the assigned task, "Spirit 03" was in contact with Marine ground troops, attacking various targets involved in the Battle of Kafji, and it is believed they were doing precisely this at 6:19 a.m. when ordered back to base; the plane, however, instead of being well off the coast and out of harm's way, took a hit from either a missile or AAA; as it was already daylight and the Spectre Gunship is only a night-fighting plane, acceptance of the task itself was an act of courage, and for this and their gallantry in action, all 14 men were awarded the Silver Star, the third highest honor a member of the military can achieve; and

WHEREAS, reflecting the outstanding courage displayed by Barry Clark and his commitment to his military career are such awards as the Silver Star, Air Medal, Combat Readiness Medal, National Defense Service Medal, Southwest Asia Service Medal, NCO Professional Military, Education Ribbon with one Oak Leaf, Enlisted Aircrew Wings (Basic), Purple Heart, Air Force Achievement Medal, Air Force Good Conduct Medal, Armed Forces Expeditionary Medal, AF Longevity Service Award Ribbon, Air Force Training Ribbon and Aircraft Maintenance Badge; and

WHEREAS, Barry Clark accepted Christ as a very young man at the First Baptist Church, Columbia, Mississippi, Dr. Howard Aultman, Pastor, during a revival with Angel Martinez preaching, and under the tutelage and influence of such people as Billy Jack Green, Guthrie Curtis, Bernie Parker, Tad Denson, and his parents, became a devout and dedicated young man, resulting in his accepting God's call into the Music Ministry; although deterred in this pursuit, neither his spirituality nor his love for music was diminished, as evidenced by reports that, until his death, he was continually witnessing to and counseling those around him, including his four and six-year-old daughters, and was especially aware of and intrigued by the locale of Desert Shield/Desert Storm, and its possible significance in relation to end-of-time prophecies; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are deeply

saddened by the death of Sergeant Barry Maxwell Clark, USAF, and extend our deepest and most heartfelt sympathy to his wife and two young daughters, the former Stephanie Gaye Farmer, and Janna and Rebecca Clark; to his loving parents, Billie Cooksey and Betty Ward Haskins Clark of Mobile, Alabama; and to other family members and friends, whose sorrow we share and with whom we grieve in the lamentable death of a distinguished young Alabamian, and a truly courageous young American patriot.

BE IT FURTHER RESOLVED, That copies of this resolution be provided for the family of Barry Maxwell Clark.

Approved September 29, 1992

Time: 6:09 P.M.

Act No. 92-641

H.J.R. 35 – Rep. Gaston

HOUSE JOINT RESOLUTION

COMMENDING PERRY JAMES OUTLAW FOR DISTINGUISHED SERVICE TO PUBLIC EDUCATION.

WHEREAS, the Alabama Legislature, in consensus of commendation, recognizes Perry James Outlaw of Mobile, Alabama, on the occasion of his retirement following a distinguished career in the field of education for 28 years; and

WHEREAS, for Perry James Outlaw, the conclusion of the 1991-1992 school year marked the end of a long and successful tenure at Ben C. Rain High School in Mobile; and

WHEREAS, Mr. Outlaw, a graduate of Jackson High School, earned his B.S. and M.A. degrees from Auburn University, his AA certification from the University of Alabama, and taught and coached at Clark County High School (1964-65) and Evergreen High School (1965-67), prior to joining the faculty at Ben C. Rain in 1967; and

WHEREAS, the recipient of the 1991-92 Gold Award, Mr. Outlaw, over the course of his 25-year tenure at Ben C. Rain, served in such capacities as teacher, coach, Social Studies Department chairman, curriculum specialist, SACS and advanced placement coordinator, textbook and adopt-a-school coordinator, and as assistant principal; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition

of outstanding contributions and service to public education, we hereby most highly commend Perry James Outlaw of Mobile, Alabama, and direct that he receive a copy of this resolution of sincere personal regard and esteem.

Approved September 29, 1992

Time: 6:10 P.M.

Act No. 92-642

H.J.R. 45 – Reps. Butler, Freeman, Haney,
Sanderford, Hall, Carter

HOUSE JOINT RESOLUTION

COMMENDING THE HUNTSVILLE DIVISION OF THE U. S. ARMY CORPS OF ENGINEERS.

WHEREAS, the Huntsville Division of the U. S. Army Corps of Engineers was established October 15, 1967, in order to support the country's Anti-Ballistic Missile Defense System; and

WHEREAS, Huntsville Division is a specialized agency of the Corps of Engineers, which, unlike the other Corps Divisions and Districts, has no geographical or water basin boundaries; and

WHEREAS, the Division's projects are broad in scope, cross Corps of Engineers boundaries, require standardization of multiple site adaptation, or were formerly performed by Headquarters, U. S. Army Corps of Engineers; and

WHEREAS, after the Division's successful completion of construction for the massive Perimeter Acquisition Radar Facility in Grand Forks, North Dakota, under the Anti-Ballistic Missile Program, the country successfully negotiated the Strategic Arms Limitations Treaty; and

WHEREAS, Huntsville Division then turned its impressive talents to many other complex and highly specialized missions, to include: projects of national importance or those which are broad in scope; projects crossing Corps of Engineers boundaries; projects requiring commonality, standardization, multiple site adaptation or technology transfer; projects requiring centralized management; and operational functions previously performed by Corps Headquarters; and

WHEREAS, these missions require the specialized services of nearly six hundred highly trained and motivated employees from throughout the Tennessee Valley; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby commend and most heartily congratulate the Huntsville Division of the U. S. Army Corps of Engineers upon reaching its twenty-fifth anniversary milestone, and do hereby direct that a copy of this resolution be forwarded to the Division with all best wishes for a bright future of continued excellence.

Approved September 29, 1992

Time: 6:11 P.M.

Act No. 92-643

H.J.R. 51 – Reps. Hooper, Cosby

HOUSE JOINT RESOLUTION

INVITING THE ALABAMA DELEGATION OF THE UNITED STATES CONGRESS TO ADDRESS A JOINT SESSION OF THE LEGISLATURE REGARDING UNFUNDED FEDERAL MANDATES.

WHEREAS, the number of unfunded federal mandates imposed upon the states by the United States Congress has alarmingly increased in recent years; and

WHEREAS, this continuing imposition places Alabama and her sister states in the precarious position of either attempting to fund the federal requirements with diminishing amounts of available revenue or jeopardizing eligibility for certain federal funds; and

WHEREAS, states and the United States Congress should engage in earnest discussions regarding the difficult posture in which the states have been cast and the urgent necessity of the states to receive monetary assistance for these mandates or relief from the enforcement of these unfunded decrees; and

WHEREAS, the members of the Legislature of Alabama desire to personally communicate with the Alabama Delegation to the United States Congress concerning this critical problem so that our representatives may be completely cognizant of the effect the actions of the federal government have at the state legislative level and may be more sensitive to the difficulties unfunded federal mandates create; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That all members of the Alabama Delegation to the United States Congress are

respectfully requested to appear before a joint session of the Legislature of Alabama to discuss the problems related to unfunded federal mandates.

BE IT FURTHER RESOLVED, That the Clerk of the House of Representatives, by copy of this resolution, advise each member of the Alabama Congressional Delegation of this invitation and of our hopeful anticipation of their acceptance.

Approved September 29, 1992

Time: 6:12 P.M.

Act No. 92-644

H.J.R. 52 – Rep. Mathis

HOUSE JOINT RESOLUTION

COMMENDING MR. AND MRS. MELVIN ROY REEDER ON THEIR 50TH WEDDING ANNIVERSARY.

WHEREAS, the institution of marriage is one of the cornerstones upon which our society is built, and a 50th Wedding Anniversary is cause for great rejoicing; and

WHEREAS, Mr. and Mrs. Melvin Roy Reeder were married on March 17, 1942, in Columbus, Georgia, and recently celebrated their 50th Wedding Anniversary; and

WHEREAS, Melvin Roy Reeder is the oldest son of Jesse and Nettie Reeder, and his wife, Hethel Louise Butler, is the oldest daughter of Brade and Albie Butler, all of Geneva County; and

WHEREAS, both Melvin and Hethel's grandparents were among the first settlers in Geneva County; and

WHEREAS, Mr. and Mrs. Reeder have three sons, Melvin Eugene, Bobby Donald, and Tony Edwin; and they have seven grandchildren and two great-grandchildren, all of whom they are justly proud; and

WHEREAS, in 1943, Melvin and Hethel settled on a farm in Geneva County near Slocomb, Alabama, where they prospered by farming every year until their retirement in 1986, on a farm now named the "Four R Farms" based on the years they farmed with their three sons; and

WHEREAS, the lasting partnership of Mr. and Mrs. Reeder is an example of trust and devotion to all who have witnessed their commitment to the ideals of marriage; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That this body extends sincere best wishes and congratulations to Mr. and Mrs. Melvin Roy Reeder on the celebration of their Golden Wedding Anniversary.

BE IT FURTHER RESOLVED, That Mr. and Mrs. Reeder receive a copy of this resolution, executed in highest personal regard and with best wishes for many more happy years together.

Approved September 29, 1992

Time: 6:13 P.M.

Act No. 92-645

H.J.R. 53 – Rep. Mathis

HOUSE JOINT RESOLUTION

COMMENDING MRS. EUNA FAYE WISE UPON HER NOMINATION FOR THE FIRST JOHN F. KENNEDY PROFILE IN COURAGE AWARD.

WHEREAS, the Legislature of Alabama notes with pride and admiration the nomination of Mrs. Euna Faye Wise for the first John F. Kennedy Profile in Courage Award; and

WHEREAS, Mrs. Wise of Samson, Alabama, is a widow and the grandmother of four, was the inspiration behind a small farming community in South Alabama working together to preserve a private retirement home and helping to promote the heritage and economy of the town of Samson through involvement in a fall festival; and

WHEREAS, the House of Lydia was built as a boarding house for retirees by the Piney Grove Baptist Church, a small rural church north of Samson, and was not required to install fire safety equipment; and

WHEREAS, the House of Lydia opened its doors to people who required assistance with daily living, and the Alabama Department of Public Health required compliance with fire code regulations as a prerequisite for licensing as an assisted-care facility; and

WHEREAS, due to a lack of funding, Mrs. Wise was instrumental in asking city and county government officials and Samson businesses to form a corporation to oversee the daily operation of the facility and begin to raise the estimated \$40,000 needed to fund the fire equipment costs; and

WHEREAS, the same unselfish desire Mrs. Wise demonstrated to the town to work with the community to preserve the House of Lydia also has helped increase the interest in preserving the history of Samson and the rural South through the establishment of the Samson Log House Museum and the annual Samson Fall Folk Festival; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we most heartily congratulate and commend Mrs. Euna Faye Wise for outstanding community leadership, service, and on her nomination for the first John F. Kennedy Profile in Courage Award, and do further direct that she receive a copy of this resolution of respect, gratitude, and warmest personal regard.

Approved September 29, 1992

Time: 6:14 P.M.

Act No. 92-646

H.J.R. 54 – Reps. McMillan, Penry

HOUSE JOINT RESOLUTION

COMMENDING CENTRAL BALDWIN'S BELLES FOR OUTSTANDING ACHIEVEMENT.

WHEREAS, the Legislature of Alabama most heartily congratulates and commends Central Baldwin's Belles as runners-up to the Belles World Series Championship; and

WHEREAS, Central Baldwin's age 15-under fast-pitch softball team, managed by Alton Black, and coached by Alton Black, Janie Black and Steve Lambert, won the state Belles Championship this past summer, thereby advancing further in the World Series than any previous Central Baldwin Dixie Girls team in the history of the competition; and

WHEREAS, Central Baldwin's All-Stars, in the World Series, played three games during an 18-hour period and, after advancing to the championship finals by beating Texas (5-1), claimed their number-two national ranking, following a loss to the Mississippi team; and

WHEREAS, Central Baldwin's Belles are Shelby Mattingly, who won the World Series batting award, and Devan Wagner, April Lambert, Jill Lambert, Christina Steiner, Chesley Long, Sharla Berry, Amy Brown, Christina Lazzari, Lorrie Ledlow, Beth Waters, Carrie Payne, Holly Driver and Kristi Black; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding achievement as runners-up to the Belles World Series Championship, we hereby most highly commend Central Baldwin's Belles, for whom copies of this congratulatory resolution shall be provided.

Approved September 29, 1992

Time: 6:15 P.M.

Act No. 92-647

H.J.R. 55 – Reps. Penry, McMillan

HOUSE JOINT RESOLUTION

COMMENDING JOHN FOSTER OF FOLEY, ALABAMA, AS FREE ENTERPRISE PERSON FOR 1992.

WHEREAS, in consensus of commendation with the South Baldwin Chamber of Commerce, the Alabama Legislature notes the chamber's selection of John Foster of Foley, Alabama, as Enterprise Person of the Year for 1992; and

WHEREAS, a prominent area physician, Dr. Foster was reared in Mobile and later moved to Pascagoula, Mississippi, where he was valedictorian of his high school class; he received his medical education at the University of Alabama and LSU Medical School, and after practicing for a short period of time in Lineville, Alabama, moved to Foley in 1955; and

WHEREAS, Dr. Foster, who was lauded as being primarily responsible for the excellent medical care available to the residents of South Baldwin County, is a former Rotarian, served as a member of the Foley City Council for 28 years, and is a past president of the South Baldwin Chamber of Commerce; and

WHEREAS, in these capacities, and through further support and promotion of the principles of the free enterprise system, Dr. John Foley, by the chamber's criteria, is a most well-deserving recipient of this prestigious honor; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding service to Foley and South Baldwin County, we hereby commend and congratulate Dr. John Foster, South Baldwin Chamber of Commerce Free Enterprise Person for 1992, and do further direct that he receive a copy of this resolution of highest personal regard.

Approved September 29, 1992

Time: 6:16 P.M.

Act No. 92-648

H.J.R. 56 – Rep. McKee

HOUSE JOINT RESOLUTION

COMMENDING RETIRED CHIEF INVESTIGATOR
WILLIAM T. SHERIFF, SR. OF MONTGOMERY, ALABAMA.

WHEREAS, the Legislature of Alabama notes, with highest commendation, the outstanding law enforcement career of William T. Sheriff, Sr., of Montgomery, Alabama, who retired officially on October 1, 1992, as Chief Investigator of Alabama Ethics Commission; and

WHEREAS, Chief William Sheriff, whose distinguished career spanned a period of 44 years, had served for 13 1/2 years as Alabama Ethics Commission's Chief Investigator; previously served as Baliff of the 15th Judicial Circuit of Alabama for a period of 2 years; and also previously served with distinction as a member of the City of Montgomery Police Department beginning in 1948 until his retirement in 1976; and

WHEREAS, during his 28 year tenure with the Montgomery Police Department, he rose through the ranks from Police Patrolman to Assistant Chief of Police, having served in the latter position for a period of 6 years prior to his honorable retirement; and

WHEREAS, during Chief Sheriff's tenure with the Montgomery Police Department, he was successful in the organization of the Department's radio and telephone communications system and the first centralized records system throughout the Department; and

WHEREAS, during his last 3 years' service with the Montgomery Police Department, he served as the Department's Field Commander and organizer of the Department's Strike Force Unit (a Special Weapons and Tactical Force); and also successfully organized the Department's Animal Control Unit, the Park Rangers and the Airport Security Force; and

WHEREAS, during his tenure with the Alabama Ethics Commission, Chief Sheriff conducted numerous investigations involving public officials and employees at the state, county and municipal levels of government with tact, discretion and thoroughness; and

WHEREAS, Chief Sheriff's longtime career as a law enforcement officer was indeed outstanding, both in length of service and in achievement; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA,
BOTH HOUSES THEREOF CONCURRING, That we hereby most

highly commend retired Chief Investigator William T. Sheriff, Sr., and direct that he receive a copy of this resolution expressing our sincere warm praise and best wishes for every continuing success in life.

Approved September 29, 1992

Time: 6:17 P.M.

Act No. 92-649

H.J.R. 59 – Rep. Gaston

HOUSE JOINT RESOLUTION

COMMENDING CHARLIE GRANADE OF MOBILE, ALABAMA FOR OUTSTANDING ACHIEVEMENT.

WHEREAS, in a desire to recognize young Alabamians of outstanding achievement, the Legislature of Alabama notes the many accomplishments of Charlie Granade, a 1991-92 graduate of Mobile's Shaw High School; and

WHEREAS, lauded by his teachers, admired and respected by his peers, Charlie Granade is indeed an exceptional young man of extraordinary talent and ability; and

WHEREAS, named class valedictorian, he served not only as president of the student council, but as an officer or representative on the council for 4 years, as well; he was instrumental in organizing an effort to build on-campus bleachers for athletic events, among numerous other accomplishments, and in community involvement, actively participated in all phases of youth activity at Dauphin Way Baptist Church; and

WHEREAS, chosen for the Most Outstanding Senior Award by the faculty at Shaw High, Charlie was also the recipient of the DAR's Outstanding Senior Award and the Randolph Hearst Award, and was selected Student of the Week by WPMI Fox 15 Television Station and the Buffalo Rock Bottling Company, among other recognitions; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby most highly commend Charlie Granade of Mobile, Alabama, a young man in whom we are justly proud, and for whom a copy of this resolution shall be provided that he may know of our sincere admiration and warm best wishes for every future success in life.

Approved September 29, 1992

Time: 6:18 P.M.

Act No. 92-650

H.J.R. 61 – Rep. Ford

HOUSE JOINT RESOLUTION

**RECOGNIZING WILLIE J. CARNES OF ATTALLA, ALABAMA,
FOR OUTSTANDING SERVICE AND ACHIEVEMENT.**

WHEREAS, Willie J. Carnes of Attalla, Alabama, has greatly distinguished himself through his impressive record of municipal leadership over the past 28 years; and

WHEREAS, Mr. Carnes, who served as Alderman for the City of Attalla through election in October 1960 and reelection in 1964, was elected Mayor of Attalla in October 1968, and reelected in 1972; after eight years in office, however, he chose not to seek a third consecutive term in 1976; and

WHEREAS, in the 1980 mayoral race, he was returned to office by the Attalla electorate, resigning in December 1981, due to poor health, but was elected mayor for the fourth time to the October 1988-October 1992 term, and has again chosen not to seek reelection; and

WHEREAS, under Mayor Carnes' outstanding leadership, the City of Attalla has indeed made great strides; his contributions and achievements have been invaluable and, as a tribute to his exemplary record of service, is deserving of special public recognition; now therefore,

**BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA,
BOTH HOUSES THEREOF CONCURRING,** That we hereby most highly commend Mayor Willie J. Carnes of Attalla, Alabama, as one of our states' most outstanding public officials, and direct that he be presented with a copy of this resolution of sincere, warm praise and esteem.

Approved September 29, 1992

Time: 6:19 P.M.

Act No. 92-651

H.J.R. 3 – Rep. Campbell

HOUSE JOINT RESOLUTION**INVITATION FOR JOINT ADDRESS**

**BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA,
BOTH HOUSES THEREOF CONCURRING,** That a joint session

of the House and Senate be held at 6:00 P.M. on September 21, 1992, for the purpose of hearing the message of the Honorable Guy Hunt, Governor of Alabama.

BE IT FURTHER RESOLVED, That a committee of three from the House to be named by the Speaker of the House, and a committee of three from the Senate to be named by the Presiding Officer of the Senate, be appointed to wait upon the Governor and advise him that the two Houses will meet in joint session at the hour named above, for the purpose of receiving his message, and that said Committee also serve as a Committee to escort the Governor to the House for the joint session.

Approved September 29, 1992

Time: 6:20 P.M.

Act No. 92-652

H.J.R. 2 – Rep. Campbell

HOUSE JOINT RESOLUTION

COMMITTEE APPOINTED TO NOTIFY GOVERNOR LEGISLATURE IS IN SESSION

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That a committee of six, consisting of three members of the Senate to be appointed by the presiding officer of the Senate, and three members on the part of the House to be appointed by the Speaker, be appointed to notify the Governor of Alabama that the Legislature is now in session and is ready for the transaction of business.

Approved September 29, 1992

Time: 6:21 P.M.

Act No. 92-653

H.J.R. 67 – Rep. Williams

HOUSE JOINT RESOLUTION

COMMENDING EARL K. HOWARD FOR DISTINGUISHED SERVICE TO THE STATE OF ALABAMA.

WHEREAS, Captain Earl K. Howard has faithfully served the people of Alabama as an Alabama State Trooper for more than 35 years; and

WHEREAS, throughout his career he has distinguished himself by his steadfast dedication to Public Safety's mission of serving and protecting all citizens; and

WHEREAS, Captain Howard began his career in law enforcement as a trooper assigned to patrol duty in Tuscaloosa in 1957, and was subsequently transferred to Opelika highway patrol duty in 1959; and

WHEREAS, he was promoted to corporal in 1965 and transferred to Eufaula in the Highway Patrol Division; and

WHEREAS, he was promoted to Sergeant in 1969 and remained in Eufaula, serving as the post commander; and

WHEREAS, Sergeant Howard was promoted to lieutenant in 1970 and transferred to the Driver License Division in Tuscaloosa; and

WHEREAS, he returned to Eufaula as a lieutenant in the Highway Patrol Division in 1971; and

WHEREAS, he was promoted to captain in 1985 in the Highway Patrol Division and has served as the commander of the Dothan District since that time; and

WHEREAS, he was promoted to captain in 1985 in the Highway Patrol Division and has served as the commander of the Dothan District since that time; and

WHEREAS, his devotion to duty, personal integrity and ability to relate to others in all walks of life have fostered a spirit of friendship, respect and trust among the citizens of this state and members of the Alabama Department of Public Safety; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby most highly commend Captain Earl K. Howard for outstanding service to the State of Alabama and on the distinction of his career as an Alabama State Trooper from 1957 to 1992.

BE IT FURTHER RESOLVED, That Captain Howard be presented with a copy of this resolution which is executed in sincere praise and with best wishes for every future happiness in retirement.

Approved September 29, 1992

Time: 6:22 P.M.

WHEREAS, the Legislature of Alabama, with profound sorrow and regret, records the lamentable death of Estell Ezell, Jr., of Lisman, Alabama, on September 19, 1992, at the age of 63 years; and

WHEREAS, Mr. Ezell earned his B.S. degree and A.A. certification from Alabama A&M University, and a Master's degree from Tuskegee University and, for forty-three years, served with the Choctaw County Board of Education as a teacher and assistant principal and, at the time of his death, as director of Tom Orr Area Vocational Center; and

WHEREAS, among innumerable religious, civic and educational involvements, Mr. Ezell was a faithful member of Shiloh Church, where he served in such positions as Chairman of the Steward and Trustee Boards, Class Leader, and Sunday School Teacher; he also was an active member of the Shriners, Knights Templar, Royal Arch Masons and Heroines of Jericho, among numerous other professional organizations and affiliations, and was co-owner and Vice President of Weatherly Funeral Services, Inc.; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we grievously mourn the death of Estell Ezell, Jr., of Lisman, Alabama, and extend our deepest and most heartfelt sympathy to his wife, Bertha R. Ezell; daughters, Rita Woods, Emogene Freeman, and Michelle Wigfall; to his six grandchildren, Angela, Demetria, Wayde, Jr., Tarrah, Loretta and Monquelle; and to other family members for whom a copy of this resolution shall be provided.

Approved September 29, 1992

Time: 5:58 P.M.

Act No. 92-655

S.J.R. 12 – Senators Bennett and Horn

SENATE JOINT RESOLUTION

COMMENDING JEWELL THOMAS ON EIGHT YEARS OF LEADERSHIP AS MAYOR OF THE CITY OF BRIGHTON.

WHEREAS, Jewell Thomas will officially retire October 4, 1992 as Mayor of Brighton after two terms in office; and

WHEREAS, during her eight years as mayor, the City of Brighton moved forward on numerous fronts including the payoff of \$963,000.00 in city sewer debt, and \$350,000.00 in road bonds; and

WHEREAS, Mayor Thomas was also instrumental in the creation of a planning and zoning board, a municipal court and the reorganization of the city police department; and

WHEREAS, Mayor Thomas has also been active in economic expansion playing a key role in location of H and H Production Company and a new McDonald's restaurant; and

WHEREAS, achievements of her administration also include senior citizens and youth programs including NYPS youth activities, Meals on Wheels project, and the participation of over 400 citizens in the USDA Commodities; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That Mayor Jewell Thomas is hereby commended for eight years of outstanding leadership for the City of Brighton.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to Mayor Thomas with the Legislature's gratitude and best wishes for the future.

Approved September 29, 1992

Time: 5:59 P.M.

Act No. 92-656

S.J.R. 10 – Senators Bedsole and Windom

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF STEPHENS GAILLARD CROOM OF MOBILE, ALABAMA.

WHEREAS, it is with profound sorrow that the Alabama Legislature records the death of Stephens Gaillard Croom of Mobile, Alabama, on September 21, 1992, at the age of 86 years; and

WHEREAS, a native and lifelong resident of Mobile, and one of that city's most prominent citizens, Mr. Croom was honored as Mobilian of the Year in 1976 in recognition of his numerous and notable contributions to his community; and

WHEREAS, Mr. Croom, a graduate of University Military School and recipient of the school's 1991 Wright Alumni Association Award for Outstanding Alumni, was a graduate also of Auburn University and earned a master's degree from Harvard University; and

WHEREAS, a retired insurance executive, who was a member and past president of both the Mobile and Alabama Independent

Insurance Agents associations, was selected by the state organization as Insuror of the Year, and was named Boss of the Year by Insurance Women of Mobile; and

WHEREAS, Mr. Croom, in lifelong service to the City of Mobile and the State of Alabama, provided support and leadership in numerous areas of civic and community concern, including the Mobile Chamber of Commerce, Azalea Trail, Friends of the Mobile Library, United Fund, the Museum of the City of Mobile, Alabama Historical Commission, and the Battleship Commission, among countless other endeavors; and

WHEREAS, Stephens Croom was indeed a much beloved and public-spirited citizen whose lamentable death has left an unfathomable void in the life of the community, and in the hearts of his family and all those whose lives he touched in genuine care and concern; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we grievously mourn the death of Stephens Gaillard Croom of Mobile, Alabama, and extend our very deepest and heartfelt sympathy to his wife, Mrs. Velma Lassiter Croom; his two grandchildren; and to other family members, whose sorrow we sincerely share and for whom a copy of this resolution shall be provided.

Approved September 29, 1992

Time: 6:00 P.M.

Act No. 92-657

H.J.R. 36 – Reps. Butler, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, Bowling, Box, Bryant, Bugg, Burke, Buskey (JE), Buskey (JL), Cagle, Campbell, Carns, Carothers, Carter, Clark (J), Clark (W), Clay, Collins, Cosby, Crow, Cullins, Curry, Dolbare, Drake, Escott-Russell, Flowers, Ford, Freeman, Fuller, Gaines, Gaston, Goodwin, Grayson, Gullatt, Hall, Hamilton, Hammett, Haney, Harper, Harvey, Hawkins, Haynes, Higginbotham, Hill, Hogan, Holladay, Holley, Holmes,

Hooper, Johnson, Kennedy,
 Knight, Kvalheim, Laird,
 Layson, Letson, Lindsey, Mathis,
 McClain, McDaniel, McDowell,
 McKee, McMillan, Melton,
 Mikell, Millican, Morrow,
 Morton, Newton (C), Newton (D),
 Parker (P), Parker (T), Payne,
 Penry, Perdue, Petelos, Poole,
 Powell, Rich, Richardson,
 Rockhold, Rogers (F), Rogers (J),
 Sanderford, Sanderson,
 Smith (C), Smith (R), Spratt,
 Starkey, Thomas, Turner,
 Turnham, Venable, Walker,
 Warren, White, Williams, Willis,
 Zoghby

HOUSE JOINT RESOLUTION

EXPRESSING SUPPORT FOR UNITED STATES SENATE BILL 1002, MAKING IT A FEDERAL CRIME TO LEAVE OR REMAIN OUTSIDE A STATE FOR THE PURPOSE OF AVOIDING PAYMENT OF ARREARAGE IN CHILD SUPPORT.

WHEREAS, United States Senator Richard Shelby of this state has filed U.S. Senate Bill 1002 to amend the Federal Criminal Code to make it a federal criminal offense to leave or remain outside a state for the purpose of avoiding payment of arrearages in child support; and

WHEREAS, the Alabama Legislature recognizes that the minor children of the State of Alabama have experienced undue hardships in cases where the non-custodial parent has left or remained outside the state for the purpose of avoiding payment of child support; and

WHEREAS, the Alabama Legislature notes that U.S. Senate Bill 1002, if passed, will provide an effective tool to combat this problem; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we do express support for U.S. Senate Bill 1002 and urge its swift passage.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to Senator Shelby and all members of the Alabama congressional delegation so that they may know of our support of this bill.

Approved September 30, 1992

Time: 5:10 P.M.

Act No. 92-658

H. 76 – Rep. Harper

AN ACT

To amend section 22-30B-2 of the Code of Alabama 1975, to remove court-stated objections to differences in hazardous waste disposal fees based on point of origin, by establishing an additional fee of \$72.00 per ton to be paid by operators of commercial hazardous waste disposal sites for certain waste or substances disposed of at such sites effective July 15, 1990, until April 30, 1992 and after the effective date of this act various rates per ton depending on the type of waste generated; to amend section 22-30B-2.1, relating to the payment of certain fees and guarantees to certain counties, so as to provide further for the allocation of the new fee and payment of the guarantee and the reimbursement of the guarantee by the county; to amend section 22-30B-2.2, relating to the payment of certain fees to the Alabama Public Health Finance Authority, so as to provide further for the allocation of the new fee to said authority; to amend section 22-30B-4 to consolidate and provide for certain county fees and to provide for their collection by the counties; to repeal section 22-30B-2.3 relating to limitation of volume of wastes annually disposed of at commercial hazardous waste disposal facilities; to amend section 22-30B-13 to provide further for a credit on the additional fee assessed on hazardous waste generated in Alabama from July 15, 1990 to April 30, 1992; to place a volume limit on certain hazardous waste or substances that may be disposed at certain facilities and to prohibit the disposal of "household waste" at such facilities and to provide for emergency waivers of volume limitation; and to establish and to fund an environmental research trust fund and to provide for the administration of the fund and the distribution of money in said fund.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 22-30B-2, Code of Alabama 1975, as amended by Act No. 90-326 is hereby amended to read as follows:

"§22-30B-2.

"(a) In addition to all other fees levied and collected prior to the effective date of this act, there is hereby levied a fee to be paid by the operators of each commercial site for the disposal of **hazardous waste or hazardous substances in the amount of \$72.00 per ton** for certain waste or substances disposed of at such site.

"(b) The fee provided by subsection (a) shall apply to all waste and substances which were generated inside of Alabama and disposed of at a commercial site for the disposal of hazardous waste or hazardous substances in Alabama effective from July 15, 1990, to April 30, 1992.

"The fee provided for by subsection (a) shall be paid to the department of revenue at the next applicable monthly reporting and remittance date following adoption of this act.

"(c) Beginning on the effective date of this act, there is hereby levied fees on waste received for disposal to be paid by the operators of each commercial site for the disposal of hazardous waste or hazardous substances as follows:

"1. A base fee of \$41.60 per ton on all hazardous waste that is identified or listed under Section 3001 of the Resource Conservation and Recovery Act of 1976 as amended, ("RCRA") and on polychlorinated biphenyl ("PCB") wastes received for disposal which is required to be disposed of in a chemical waste landfill approved under the Federal Toxic Substance Control Act ("TSCA").

"2. In addition to the base fee imposed in paragraph 1, a fee of \$62.00 per ton on acute hazardous waste listed in 40 CFR 261.33 (e) and having an EPA Hazardous Waste Number designation beginning with the letter "P", except residuals from incineration of such waste.

"3. In addition to the base fee imposed in paragraph 1, a fee of \$25.00 per ton on toxic hazardous waste listed in 40 CFR 261.33(f) and having an EPA Hazardous Waste Number designation beginning with the letter "U", except residuals from incineration of such waste.

"4. A fee of \$11.60 per ton on all other waste not referenced in these subsections (c) 1 through 3 at a commercial site for the disposal of hazardous waste and hazardous substances.

"(d) Fees assessed herein against the operators of commercial sites for the disposal of hazardous waste or hazardous substances shall not be applied until after October 1, 1992, to waste disposed of at such sites by secondary lead smelters to the extent that said fees exceed the fees in effect on April 17, 1990; provided, however, that any business or industry which is exempt from the payment of any fees or taxes levied by this act that fails to develop and implement the technology to eliminate the generation of hazardous wastes and substances by October 1, 1992, shall pay to the general fund of the state of Alabama an amount equal to the additional fees and taxes levied by the provisions of this act that would have been due and payable at that time by the provisions of this act. Provided, further, that in order for any taxpayer to qualify for such exemption, a petition on a form provided by the Department of Revenue must be submitted to the Department of Revenue not later than September 30, 1991. Said petition shall provide that the exempted taxpayer acknowledge awareness of the provisions of this act."

Section 2. Section 22-30B-2.1, Code of Alabama 1975, is hereby amended to read as follows:

"§22-30B-2.1.

"(a) There is hereby provided to all counties having less than 25,000 population and wherein on April 17, 1990, a commercial site for the disposal of hazardous waste or hazardous substances is

located an annual payment of two and one-half percent of the gross receipts generated by subsection (a) and the receipts generated from the increase in fees under section 22-30B-2(c) as provided herein over those fees in existence on October 1, 1989.

“(b) Said counties as identified in subsection (a) above are hereby guaranteed an amount not to exceed the lesser of \$4,200,000.00 or 100 percent of the receipts to the state paid on wastes or substances disposed of in said county. In determining whether said counties are entitled to receive benefit of all or any portion of the guarantee herein made, there shall be charged against said counties all receipts which they receive pursuant to this chapter and the provisions of Alabama Act 83-480 or other applicable local act.

“(c) Determination of entitlement to the guarantee shall be made quarterly by the Governor or his designee not later than 45 days following the end of each quarter of the state’s fiscal year. Such determination shall be the difference in those fees payable to the county under the provisions of this chapter and Alabama Act 83-480 and any other applicable local act for the 3 month period ending the previous quarter as compared to the applicable guarantee amount of \$1,050,000.00 per quarter.

“(d) In the event the guarantee provided in subsection (b) is required to be exercised, the Department of Revenue shall, within 10 days of notification from the Governor or his designee, certify to the State Finance Director that an appropriate amount as determined in subsection (c) from the first receipts generated by this act in each quarter of the fiscal year shall be paid to the appropriate county commission. The State Finance Director is hereby authorized to cause to be paid from current state revenues generated by this act said amount which shall be paid as a reduction of current fiscal year revenues to the state, which said payment shall not in any event exceed an amount equal to the total current fiscal year revenues generated by this act and paid into the State Treasury. The county commission shall, within 10 days of receipt of said funds, disburse the funds according to the provisions of Alabama Act 83-480 or other applicable general or local laws.

“(e) In the event that, receipts to any county do not reach \$4,200,000.00 and such receipts are supplemented by revenue which would have accrued to the State General Fund in order to reach the guaranteed level of \$4,200,000.00 as provided for in this Section, said county, beginning October 1, 1992, shall reimburse the State General Fund for any such revenue received by said county in those fiscal years in which the receipts to that county exceed \$4,200,000.00 by the amount that such receipts exceed \$4,200,000.00 until the State General Fund shall have been reimbursed in full.”

Section 3. Section 22-30B-2.2, Code of Alabama 1975, is hereby amended to read as follows:

“§22-30B-2.2.

“For the purpose of providing funds, not to exceed \$4,500,000.00 during any fiscal year of the state, for the Alabama public health finance authority to pay at their respective maturities the principal of premiums, if any, and interest on any bonds issued by it under the provisions of Act 90-598 of the Regular Session of 1990, there is hereby irrevocably pledged for said above purpose and hereby appropriated the annual amount necessary, not to exceed \$4,500,000.00 during any fiscal year of the state, from the first receipts after payment of any guarantees in section 22-30B-2.1 of the fees that are levied on the disposal of waste, hazardous waste or hazardous substances pursuant to this act and that were not theretofore appropriated and paid into the general fund of the state of Alabama (i.e., the amount resulting from the additional fee of \$72.00 per ton for all waste or substances disposed of at each commercial site for the disposal of hazardous waste or hazardous substances from July 15, 1990 to April 30, 1992 and the amount resulting from the additional fees provided for in this act for all waste or substances disposed of at each commercial site for the disposal of hazardous waste or hazardous substances after the effective date of this act). The Alabama public health finance authority referred to in this section shall be organized pursuant to Act 90-598 of the Regular Session of 1990. Provided, however, if said Alabama public health finance authority is not in existence on July 15, 1990, the funds provided for in this section shall be deposited into the State General Fund until enactment of legislation establishing the aforementioned Alabama public health finance authority.”

Section 4. Section 22-30B-2.3, Code of Alabama, 1975 is hereby repealed.

Section 5. No commercial site for the disposal of hazardous waste and hazardous substances shall during any calendar year receive and dispose of more than 600,000 tons of waste that cannot be legally disposed of in a solid waste landfill permitted under subtitle D of RCRA 42USC6941.

Provided, however, that the Environmental Management Commission or its designee may allow the disposal of hazardous wastes in excess of the 600,000 ton annual limitation of volume imposed in this section if such action is determined by the Environmental Management Commission or its designee to be necessary to protect human health or the environment in the state. Provided further, if the commission determines that public

awareness of environmental matters may be enhanced by special events or if amnesty or similar programs will promote the protection of human health and the environment of Alabama, then it may exempt any wastes so collected from the limitation of volume provisions of this section. Provided further, the Governor, or his designee, may allow the disposal of hazardous waste in excess of the 600,000 ton annual limitation of volume imposed in this section if such action is necessary to allow the state to comply with its obligations to assure disposal capacity pursuant to applicable state or federal law.

Notwithstanding the foregoing the operator of a commercial site for the disposal of hazardous waste and hazardous substances shall not be permitted to dispose of any "household waste" as defined in 40 CFR 261.4(b), except residuals from incineration of such waste and household hazardous waste or with prior approval by the Alabama Department of Environmental Management.

Section 6. Section 22-30B-4, Code of Alabama 1975, is hereby amended to read as follows:

"§22-30B-4.

"(a) In addition to all fees levied heretofore or hereafter, expressly including the tax levied in section 22-30B-2, there is also hereby levied a fee to be paid by the operators of each commercial site for the disposal of hazardous waste in the amount of \$1.90 per ton to be collected by the county and deposited to credit of the general fund of the county wherein such commercial hazardous waste disposal site is located; of this fee, \$.40 shall be expended for health purposes and the remainder for such purposes as may be appropriated by local act.

"(b) In addition to all other fees, there is also hereby levied a fee to be paid by the operators of each commercial site for the disposal of hazardous waste in the amount of \$.50 per ton effective October 1, 1991 to be collected by the county and deposited to the credit of the county wherein such commercial hazardous waste disposal site is located, and all such proceeds shall be expended for such purposes as may be appropriated by local act.

"(c) It is further provided that all provisions relating to the state fee including date of payment, required reporting, penalties, interest, property liens, record keeping, recovery of overpayment and prosecution for violations shall also apply to the county fees levied by this section."

Section 7. Section 22-30B-13, Code of Alabama 1975, as amended, is hereby amended to read as follows:

"§22-30B-13.

“(a) If, upon examination by the Department of Revenue, it is determined that a fee has been paid in excess of that properly due, then the amount in excess shall be credited against any amount thereof then due from the operator, and any balance of such excess shall be refunded by certificate of overpayment issued by the department to the comptroller. Upon approval of such certificate by the comptroller, he shall issue his warrant on the treasurer for the amount shown by such certificate. Any fees recovered through judicial action of an operator shall be refunded in like manner, but shall be accompanied by a copy of the appropriate judgement of a court.

“(b) Any operator subject to this chapter who, after the effective date of this act, pays increased fees for disposal of waste and substances which have been generated inside of Alabama shall be entitled to a credit of \$72.00 per ton for the amount of such waste generated inside Alabama and disposed of from July 15, 1990 to April 30, 1992. Such credit created under this subsection of this act shall be credited against any fees which are payable to the general fund of the State of Alabama and shall be granted at the rate of 1/12th of such credit per month, beginning October 1, 1993 and until such credit is exhausted. For purposes of this subsection, no certificate of overpayment must be issued by the State Comptroller.

Section 8. From the base fee levied in section 22-30B-2(c)(1) by this act, \$500,000 shall annually be deposited into a trust fund which shall be known as “The Alabama Legacy for Environmental Research Trust (ALERT).” Such funds shall be available for funding of environmental research, public awareness, and industrial/business environmental education in the areas of hazardous waste production, reduction, transportation and disposal.

Funds deposited into the Alabama Legacy for Environmental Research Trust (ALERT) shall be available to all Alabama public institutions of higher education which presently have established programs in research and service.

Said trust fund shall be administered by the Alabama Department of Public Health. Such authority, as is necessary, is granted to the Alabama Department of Public Health to establish a matching grant program and to promulgate rules and regulations to implement said grant program and the provisions of this section. It is further provided that grants approved under said grant program shall require at least a fifty (50) percent match.

Section 9. In addition to all other fees levied herein, there is also hereby levied a fee to be paid by the operators of each commercial site for the disposal of hazardous waste or hazardous substances

in the amount of \$1.00 per ton on all wastes or substances disposed of at such site, to be deposited and allocated specifically to the Alabama Hazardous Substance Cleanup Fund established by Act No. 88-859, Acts of Alabama, 1988 and codified at §22-30A-1 et seq Code of Alabama 1975, such money to be used for the specific purposes as expressed therein.

Section 10. All laws or parts of laws which conflict with this act are repealed.

Section 11. The provisions of this act are severable. If any part of the act is declared unconstitutional, such declaration shall not affect the part which remains.

Section 12. This act shall become effective immediately following its passage and approval by the Governor or upon its otherwise becoming a law.

Approved September 30, 1992

Time: 5:15 P.M.

Act No. 92-659

H. 41 – Reps. Hogan, Cagle

AN ACT

To make supplemental appropriations from the State General Fund to the Alabama Mining Museum and to the Alabama Mining Academy for the fiscal year ending September 30, 1993

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby appropriated from the State General Fund to the Alabama Mining Museum the sum of fifty thousand dollars (\$50,000) for the fiscal year ending September 30, 1993. There is hereby appropriated from the State General Fund to the Alabama Mining Academy the sum of one hundred twenty-five thousand dollars (\$125,000) for the fiscal year ending September 30, 1993. The appropriations herein shall be in addition to any and all other funds heretofore or hereinafter appropriated to the Alabama Mining Museum and to the Alabama Mining Academy.

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved September 30, 1992

Time: 5:40 P.M.

Act No. 92-660

H.63 – Reps. Venable, Mikell

AN ACT

To propose a constitutional amendment relating to Elmore County authorizing the county governing body to levy a fee for fire protection services and emergency medical care and providing for the distribution of funds from the fees; and to provide for approval.

Be It Enacted by the Legislature of Alabama:

Section 1. The following amendment to the Constitution of Alabama of 1901 is proposed and shall become valid as a part of the Constitution when all requirements of this act are fulfilled:

PROPOSED AMENDMENT

The Legislature may from time to time by local law authorize the county governing body of Elmore County to levy and collect fees, annually not to exceed \$25.00 on each residence and \$50.00 on each business located within the county, for fire protection services and emergency medical care, such local law may provide for the distribution of the fees to volunteer fire departments and to emergency medical technicians who are members of volunteer fire departments, or provide for the distribution of the fees to an association of volunteer fire departments to be distributed by the association for the same purposes.

Section 2. This amendment shall have no force and effect unless it shall first be approved by at least three-fifths vote of the elected members of each house and unanimously approved by the local constitutional amendment commission.

Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in each newspaper qualified to run legal notices in the county affected.

Section 4. An election upon the proposed amendment shall be held at the next general, special, constitutional, or county election in Elmore County. The election shall be held in accordance with Amendment 425 to the Constitution of 1901, and the general election laws of this state.

CONSTITUTIONAL AMENDMENT

Passed the House September 23, 1992

Passed the Senate September 29, 1992 as amended

Passed the House as amended by Conference Committee Report, September 30, 1992

Passed the Senate as amended by Conference Committee
Report, September 30, 1992

Act No. 92-661

H. 27 – Rep. Turner

AN ACT

To make a supplemental appropriation to the Department of Corrections from the State General Fund in the amount of \$13,600,100 and provides for the reversion of any funds that become available from the General Fund to the Department of Corrections above \$143,600,000 for the fiscal year ending September 30, 1993.

Be It Enacted by the Legislature of Alabama:

Section 1. In addition to all other appropriations heretofore or hereafter made, there is hereby appropriated from the State General Fund to the Department of Corrections the sum of thirteen million six hundred thousand one hundred dollars (\$13,600,100) for the fiscal year ending September 30, 1993. The Easterling Correctional Facility in Barbour County shall be reopened no later than January 1, 1993; provided no additional personnel will be laid off from other correctional facilities. Of this amount so appropriated the sum of \$101,100 shall be expended for Youth Services non-secure detention facilities in the following amounts:

(1) Baldwin County Youth Services	\$16,800
(2) Colbert-Lauderdale Attention Home	\$43,800
(3) Cornerstone	\$3,000
(4) Glenwood Facility	\$37,500

Section 2. In the event that funds available to be allotted to the Department of Corrections from the State General Fund for the fiscal year ending September 30, 1993 exceed \$143,600,000, the funds in excess of that amount shall revert to the State General Fund.

Section 3. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 4. All laws or parts of law which conflict with this act are hereby specifically repealed.

Section 5. This act shall become effective on October 1, 1992.

Approved October 1, 1992

Time: 10:30 A.M.

Act No. 92-662

H.J.R. 103 – Reps. White, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, Bowling, Box, Bryant, Bugg, Burke, Buskey (JE), Buskey (JL), Butler, Cagle, Campbell, Carns, Carothers, Carter, Clark (J), Clark (W), Clay, Collins, Cosby, Crow, Cullins, Curry, Dolbare, Drake, Escott-Russell, Flowers, Ford, Freeman, Fuller, Gaines, Gaston, Goodwin, Grayson, Gullatt, Hall, Hamilton, Hammett, Haney, Harper, Harvey, Hawkins, Haynes, Higginbotham, Hill, Hogan, Holladay, Holley, Holmes, Hooper, Johnson, Kennedy, Knight, Kvalheim, Laird, Layson, Letson, Lindsey, Mathis, McClain, McDaniel, McDowell, McKee, McMillan, Melton, Mikell, Millican, Morrow, Morton, Newton (C), Newton (D), Parker (P), Parker (T), Payne, Penry, Perdue, Petelos, Poole, Powell, Rich, Richardson, Rockhold, Rogers (F), Rogers (J), Sanderford, Sanderson, Smith (C), Smith (R), Spratt, Starkey, Thomas, Turner, Turnham, Venable, Walker, Warren, Williams, Willis, Zoghby

HOUSE JOINT RESOLUTION

WISHING GOVERNOR GEORGE C. WALLACE A SPEEDY RECOVERY.

WHEREAS, it is with deep regret that the Alabama Legislature notes the hospitalization of Governor George C. Wallace, and the seriousness of his illness which is a cause of much concern to all citizens of the State; and

WHEREAS, we are encouraged, however, that Governor Wallace is continuing to display the determination and fighting spirit he has shown in the years since an attempted assassination left him in constant pain, and subject to recurring infections and other illnesses; and

WHEREAS, we further wish to assure the Governor and all his family that our thoughts and prayers are with them during this time of such great distress, and that we earnestly beseech for him the speediest possible recovery; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby extend to Governor George Wallace our sincere best wishes during his illness and express our hopes that he will shortly be leaving the hospital to continue his recuperation at home.

BE IT FURTHER RESOLVED, That a copy of this resolution be forwarded to Governor Wallace's family that they may personally convey our thoughts to him, and know also of our concern for them.

Approved October 1, 1992

Time: 3:50 P.M.

Act No. 92-663

H.J.R. 99 – Reps. Knight, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, Bowling, Box, Bryant, Bugg, Burke, Buskey (JE), Buskey (JL), Butler, Cagle, Campbell, Carns, Carothers, Carter, Clark (J), Clark (W), Clay, Collins, Cosby, Crow, Cullins, Curry, Dolbare, Drake, Escott-Russell, Flowers, Ford, Freeman, Fuller, Gaines, Gaston, Goodwin, Grayson, Gullatt, Hall, Hamilton, Hammett, Haney, Harper, Harvey, Hawkins, Haynes, Higginbotham, Hill, Hogan, Holladay, Holley, Holmes, Hooper, Johnson, Kennedy, Kvalheim, Laird, Layson, Letson, Lindsey, Mathis,

McClain, McDaniel, McDowell,
 McKee, McMillan, Melton,
 Mikell, Millican, Morrow,
 Morton, Newton (C), Newton (D),
 Parker (P), Parker (T), Payne,
 Penry, Perdue, Petelos, Poole,
 Powell, Rich, Richardson,
 Rockhold, Rogers (F), Rogers (J),
 Sanderford, Sanderson,
 Smith (C), Smith (R), Spratt,
 Starkey, Thomas, Turner,
 Turnham, Venable, Walker,
 Warren, White, Williams, Willis,
 Zoghby

HOUSE JOINT RESOLUTION

COMMENDING DR. ROBERT M. MCCHESENEY ON THE OCCASION OF HIS INAUGURATION AS THE 13TH PRESIDENT OF THE UNIVERSITY OF MONTEVALLO.

WHEREAS, on Thursday, October 8, 1992, the University of Montevallo will celebrate its 96th Annual Founders Day by the inauguration of Dr. Robert M. McChesney as its 13th President; and

WHEREAS, the University has a unique role in Alabama higher education, with its focus as a public liberal arts university, and historically has pioneered many Alabama education initiatives from its founding in 1896 as a public institution for women's education; and

WHEREAS, the University has had a long and distinguished line of educators who have served as President, and Dr. McChesney joins this line with an impressive record of academic and civic credentials and service; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we do hereby extend our sincere congratulations and best wishes to Dr. Robert M. McChesney, his wife Laraine, the Board of Trustees, Faculty, Staff, Students, Alumni and friends of the University of Montevallo on the occasion of the inauguration of Dr. McChesney as the thirteenth President of the University.

BE IT FURTHER RESOLVED, That as a token of our respect, best wishes, and desire to work closely with Dr. McChesney and the University, a copy of this resolution shall be presented to him.

Approved October 1, 1992

Time: 3:45 P.M.

Act No. 92-664

H.J.R. 46 – Rep. Cosby

HOUSE JOINT RESOLUTION

CREATING A JOINT LEGISLATIVE COMMITTEE TO STUDY THE DEVELOPMENT OF MARKETS FOR RECOVERED MATERIALS AND PRODUCTS WITH RECYCLED CONTENT.

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That a joint legislative committee is created to study the development of markets in this state for recovered materials and products with recycled content, and the feasibility of offering tax incentives, governmental assistance, and other types of aid to facilitate the development of the markets. The committee shall be composed of four members of the Senate appointed by the President of the Senate and four members of the House of Representatives appointed by the Speaker of the House of Representatives. The chair and vice chair of the committee shall be elected at the first meeting by the members of the committee. Upon the request of the chair, the Secretary of the Senate and the Clerk of the House of Representatives shall provide clerical assistance necessary for the work of the committee. The committee shall report its findings, conclusions, and recommendations to the Legislature not later than the fifth legislative day of the 1993 Regular Session, at which time the committee shall be dissolved. Each member of the committee shall serve without receiving any additional compensation. All state agencies and departments shall assist the committee, including, but not limited to, the Alabama Development Office and the Department of Environmental Management.

Approved October 6, 1992

Time: 4:30 P.M.

Act No. 92-665

H. 2 – Rep. Freeman

AN ACT

Relating to Madison County; to abolish the office of constable provided for in each election precinct.

Be It Enacted by the Legislature of Alabama:

Section 1. In Madison County, the office of constable provided for in each election precinct pursuant to Chapter 23, Title 36, Code of Alabama 1975, is abolished.

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 3. All laws or parts of laws which conflict with this act are repealed.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:31 P.M.

Act No. 92-666

H. 7 – Rep. Holley

AN ACT

Relating to Coffee County; to provide further for the compensation of election officers; and to repeal Act No. 132, H. 156, 1978 Second Special Session (Acts of Alabama 1978, p. 1861).

Be It Enacted by the Legislature of Alabama:

Section 1. In Coffee County, each election officer shall be entitled to a local supplement so that the total compensation of each election officer shall be fifty dollars (\$50) per day. The amount of any local supplement shall be in addition to the mileage provided to election officers pursuant to the general laws of this state. The local supplement shall be paid as a preferred claim out of monies in the county treasury not otherwise appropriated on proper proof of services rendered. Any local supplement provided pursuant to this act shall not affect the compensation paid out of state funds.

Section 2. All laws or parts of laws which conflict with this act are repealed. Act No. 132, H. 156, 1978 Second Special Session (Acts of Alabama 1978, p. 1861) is specifically repealed.

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:32 P.M.

Act No. 92-667

H. 38 – Rep. Newton (C)

AN ACT

Relating to Butler County; providing for the establishment of a unit system for road maintenance, repair, and construction; providing for the employment, qualifications, and compensation of a county engineer; defining the authority, powers, and

duties of the county engineer; and prescribing certain regulations relating to county vehicles.

Be It Enacted by the Legislature of Alabama:

Section 1. The Butler County Commission shall set the necessary policies and priorities for the construction, maintenance, and repair of all public roads, county highways, bridges, ferries, and public facilities within Butler County, Alabama, to provide the people of Butler County with a safe and adequate road system.

Section 2. The Butler County Commission, or any succeeding county governing body, shall appoint and employ a county engineer, who shall be a thoroughly qualified and competent professional engineer and may or may not be a land surveyor. The county engineer shall possess all of the qualifications as specified for county engineers under the general laws of the State of Alabama. The county engineer shall devote his or her entire time and attention to the maintenance and construction of the Butler County public roads, highways, bridges, ferries, and other county engineering projects and shall, during employment, reside in Butler County, Alabama. The county engineer shall serve at the pleasure of the Butler County Commission.

Section 3. It shall be the duty of the county engineer to:

(1) Employ, supervise, and direct all assistants to properly maintain and construct the public roads, highways, bridges, and ferries of Butler County, and prescribe the duties, discharge employees for cause, or when he or she is not needed.

(2) Perform engineering and surveying service as may be required, and to prepare and maintain the necessary maps and records

(3) Maintain the necessary accounting records to reflect the cost of the county highway system.

(4) Build or construct new roads, or change old roads, but only when ordered to do so by proper order of the county commission.

(5) Construct and maintain all county roads on the basis of the county as a unit to the extent it is feasible, without regard to any district or beat lines.

Section 4. It shall be the duty of the commission to fix, from time to time, in accordance with prevailing economic conditions, the various scales of wages or salaries to be paid for labor necessary in the maintenance and construction of roads, bridges, ferries, and public facilities. The wage or salary scale shall not be exceeded by the engineer in employing labor and assistants.

Section 5. The commission shall fix the amount of the salary of the county engineer, payable in equal monthly installments from appropriate road and highway funds.

Section 6. Before entering upon his or her duties, the county engineer shall make and enter into a surety bond in the amount of five thousand dollars (\$5,000), payable to Butler County, conditioned on the faithful discharge and performance of his or her duties as engineer, and for the faithful accounting of all monies or property of Butler County, which may come into his or her possession or custody. The bond shall be executed by a surety company authorized and qualified to do business in Alabama and be approved by the commission. The premiums shall be paid by the county.

Section 7. The commission shall furnish the county engineer with an office within the county and all necessary office supplies, equipment, communication, utilities, and necessary transportation to accomplish his or her duties under this act.

Section 8. The county engineer shall be the custodian and accountable to the Butler County Commission for all road machinery and equipment, tools, supplies, and repair parts owned by Butler County. The Butler County Commission shall establish necessary policies and regulations governing accountability and relief therefrom. The commission shall furnish the necessary storage and repair facilities for the tools, machinery, supplies and equipment, and the county engineer shall keep on file in his or her office an up-to-date inventory containing a list of all tools, machinery, equipment, parts, and supplies owned by Butler County.

Section 9. The authority of the county engineer shall be limited to the requisition for the expenditure of funds for the purpose of construction, maintenance, or repairs of public roads, bridges, ferries, or any other duties for Butler County as may be set aside and appropriated by the commission as hereinafter provided. It shall be the duty of the commission at some meeting in September of each calendar year, or not later than the first meeting in October following, by order or resolution spread upon the minutes, to fix and determine the amount of funds which will be available for the purpose of building, maintaining, and constructing public roads, bridges, and ferries of Butler County for the current fiscal year, beginning on October 1st, which amount, other than the salary of the county engineer, shall not be exceeded in the performance of duties required of the county engineer for that period. The commission is authorized from time to time within any period, to increase the amount so allowed to be expended by the county engineer during the period, when the authorization will not conflict with provisions of the general law under the Budget Act, Section 11-8-3 of the

Code of Alabama 1975. Immediately upon the passage and approval of this act, if funds are presently available and have not been set aside by the present Butler County Commission for the current fiscal year, it shall be the duty of the commission to set aside a sufficient portion of the balance of the funds for the maintenance of the roads, bridges, and ferries until the meeting in September, or October, 1993, as provided by this act.

Section 10. The county engineer shall make written requisition to the County Purchasing Agent for all materials, machinery, equipment, and necessary supplies needed for the construction, maintenance, or repair of the public roads, bridges, and ferries of Butler County. The requisitions shall be filed and presented by the chair to the commission at its next meeting, for the approval of the commission. The County Purchasing Agent may make purchases without first obtaining the approval of the Butler County Commission if in the judgement of the engineer, the delay caused by this procedure may cause an unnecessary and harmful interruption in the operation of the county road system. The purchases shall be made in accordance with prevailing law. The County Purchasing Agent shall be solely responsible and accountable for purchasing the materials, machinery, equipment, and supplies under the approved requisitions and shall report these monthly to the Butler County Commission.

Section 11. It shall be the further duty of the county engineer to inspect and approve on delivery all materials, machinery, equipment, and supplies, purchased by Butler County for the use on public roads, bridges, and ferries prior to payment. Any deviation from this policy shall be reported by the engineer to the Butler County Commission.

Section 12. In the event of an emergency in which it would be impossible for the commission to employ an engineer, the commission shall employ a competent road supervisor who need not be an engineer, but, when so employed shall have all the duties and authority of the engineer, and be subject to this act. An emergency employment of a competent road supervisor shall not exist longer than necessary to employ a qualified engineer who will accept employment by the commission under the terms of this act. It is the intention of this act to provide that, when county roads, bridges, and ferries are to be maintained or constructed in the county, the supervision thereof shall be under a qualified engineer.

Section 13. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 14. All laws or parts of laws which conflict with this act are repealed.

Section 15. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law. The Butler County Commission shall, within 60 days of the effective date of this act, provide the county engineer and the necessary facilities and budgets to fully implement the terms of this act.

Approved October 6, 1992

Time: 4:33 P.M.

Act No. 92-668

H. 57 – Rep. Hammett

AN ACT

Relating to Covington County; providing for an additional expense allowance, payable from county funds, for election officials who work at polling places in the county; and repealing Act No. 439, H. 914 of the 1976 Regular Session (Acts 1976, p. 540), entitled "Relating to counties having a population of not less than 34,000 nor more than 34,800 according to the most recent federal decennial census; to provide for the compensation of election officers in such counties to be payable out of county funds."

Be It Enacted by the Legislature of Alabama:

Section 1. In Covington County, each election officer shall be paid a total local supplemental expense allowance of twenty-five dollars (\$25) per day from the county funds. The local supplement shall be in addition to the compensation and mileage provided by Sections 17-6-13 and 17-9-20 of the Code of Alabama 1975. The several claims shall be paid as preferred claims out of monies in the county treasury not otherwise appropriated, on proper proof of services rendered, and shall be in lieu of any other compensation heretofore provided by local laws of application or local law. Amounts paid to election officers under this act for per diem or mileage in excess of amounts prescribed by general laws shall not in any case be reimbursable by the state.

Section 2. Act No. 439, H. 914 of the 1976 Regular Session (Acts 1976, p. 540) is specifically repealed and all laws which conflict with this act are repealed.

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:34 P.M.

Act No. 92-669

H. 91 – Reps. Penry, McMillan

AN ACT

Relating to Baldwin County; providing further for the compensation of the judge of probate; repealing conflicting law; and providing an effective date.

Be It Enacted by the Legislature of Alabama:

Section 1. In Baldwin County, commencing at the next term of office in January 1995, the judge of probate shall receive compensation in the form of an annual salary and expense allowance in amount equal to the state salary and county expense allowance paid to the District Judge of Baldwin County as may, from time to time, be amended. The salary and expense allowance provided by this act shall be in lieu of any other prior compensation, fees, allowances, or income provided by law for the Judge of Probate of Baldwin County, and shall be paid in equal monthly installments out of the general fund of the county treasury.

Section 2. All fees, commissions, allowances, or charges heretofore collected for the use of the judge of probate shall be collected and paid into the county general fund.

Section 3. All laws or parts of laws which conflict with this act are repealed and specifically Act No. 80-577, H. 1065, 1980 Regular Session (Acts 1980, p. 890), is repealed

Section 4. The provisions of this act shall become effective commencing with the term of office of the Judge of Probate of Baldwin County commencing in January 1995.

Approved October 6, 1992

Time: 4:35 P.M.

Act No. 92-670

H. 92 – Reps. Penry, McMillan

AN ACT

Relating to Baldwin County; providing further for the compensation of poll workers payable from the county general fund.

Be It Enacted by the Legislature of Alabama:

Section 1. In Baldwin County each poll worker shall receive compensation in the amount of not more than one hundred dollars (\$100) per day nor less than fifty dollars (\$50) per day payable out of the general fund of the county as set by the county commission from time to time. The compensation shall be in lieu of any and all prior or subsequent compensation provided by law.

Section 2. All laws or parts of laws which conflict with this act are repealed.

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:36 P.M.

Act No. 92-671

H.J.R. 69 – Reps. Black (L), Bryant,
Kennedy, Blakeney

HOUSE JOINT RESOLUTION

MOURNING THE DEATH OF ESTELL EZELL OF LISMAN,
ALABAMA.

WHEREAS, the Alabama Legislature grievously records the tragic and untimely death of Estell Ezell of the Lisman community in Choctaw County, Alabama, on September 19, 1992; and

WHEREAS, Mr. Ezell, who earned his B.S. degree and A.A. certification from Alabama A&M University, and a Master's degree from Tuskegee University, was serving as Director of Tom Orr Area Vocational School at the time of his lamentable death; and

WHEREAS, an active, faithful member of Shiloh Christian Methodist Episcopal Church, Mr. Ezell served as a steward and as a member of the joint board of finance in the general church; he also was a member of the Shriners, Knights Templar, Eastern Star, Heroines of Jericho and Cyrene Crusade, as well as a Master Mason, Royal Arch Mason, Thirty-Second Degree Mason and Thirty-Third Degree Mason; and

WHEREAS, the sudden passing of Estell Ezell is indeed a severe blow to the community, to his beloved family, neighbors and many, many friends, who are sorely bereft in their great and grievous loss; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are deeply saddened by the death of Estell Ezell of Lisman, Alabama, and

express our deepest sympathy to each member of his family, whose sorrow we sincerely share, and for whom a copy of this resolution shall be provided.

Approved October 6, 1992

Time: 4:37 P.M.

Act No. 92-672

H.J.R. 71 – Reps. McMillan, Penry, Turner,
Gaston, Kvalheim, Zoghby,
Rockhold, Kennedy,
Buskey (JE), Clark (W), Harper

HOUSE JOINT RESOLUTION

EXPRESSING APPRECIATION TO MR. HOWARD BRONSON, JR., AND THE MOBILE REGISTER.

WHEREAS, the members of the Alabama Legislature, while in session, are often required to be in Montgomery from three to five days each week; and

WHEREAS, the legislators from South Alabama have found it difficult to be informed regarding events which occur in South Alabama while the Legislature is in session; and

WHEREAS, The Mobile Register is currently being delivered on a timely basis to all members of the Alabama Legislature; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we respectfully express appreciation to Mr. Howard Bronson, Jr., Publisher, President and CEO of The Mobile Register, for his thoughtfulness and generosity in having the newspapers delivered daily to legislators while in session in Montgomery, Alabama.

BE IT FURTHER RESOLVED, That a copy of this resolution of sincere gratitude be forwarded to Mr. Howard Bronson, Jr.

Approved October 6, 1992

Time: 4:38 P.M.

Act No. 92-673

H.J.R. 83 – Reps. Buskey (JE), Clark (W),
Kennedy

HOUSE JOINT RESOLUTION

COMMENDING ELDER PHILLIP GARDNER OF MASON MEMORIAL TEMPLE, COGIC, MOBILE, ALABAMA.

WHEREAS, the Alabama Legislature notes with pleased commendation the forthcoming celebration on Sunday, October 25, 1992, of Elder Phillip Gardner's 18th Anniversary as pastor of Mason Memorial Temple, COGIC, Mobile, Alabama; and

WHEREAS, Elder Gardner, the fourth of twelve children, was inspired into the ministry by the teachings of his parents, the late Joseph Gardner and Mrs. Laura McDade Gardner, former members of Mason Memorial Temple; and

WHEREAS, in the ministry since 1971, Elder Gardner served as pastor of Book Avenue COGIC from 1971 until 1973 and, since 1974, has provided pastoral leadership to Mason Memorial Temple; and

WHEREAS, he also served as State President of the Second Jurisdiction of the State of Alabama for the Churches of God in Christ for 25 years under the leadership of Bishop W. Harris and former Bishop James Bailey; and

WHEREAS, Elder Gardner's tenure as pastor of Mason Memorial Temple has indeed been one of great inspiration and devotion, and the celebration of his 18th Year Anniversary is an event to be recognized with praise; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we join with the members and community in celebrating the 18th Anniversary of Elder Phillip Gardner's pastorate at Mason Memorial Temple, COGIC, Mobile, Alabama, and direct that copies of this resolution be prepared for appropriate presentation on this eventful occasion.

Approved October 6, 1992

Time: 4:39 P.M.

Act No. 92-674

H.J.R. 84 – Reps. Buskey (JL), Holmes,
Walker, McKee, Hooper

HOUSE JOINT RESOLUTION

MOURNING THE DEATH OF ROBERT DABNEY SMILEY, JR., OF MONTGOMERY, ALABAMA.

WHEREAS, a source of deep sorrow to the Legislature of Alabama is the lamentable and untimely death of Robert Dabney Smiley, Jr., of Montgomery, Alabama, on August 18, 1992, at the age of just 49 years; and

WHEREAS, Mr. Smiley, born in Mobile to the late Robert Smiley and Ida Belle Smiley, received Christ at an early age, was

baptized by the late Dr. Martin Luther King, Jr., and remained a member of the Dexter Avenue King Memorial Baptist Church until death came "to bid the soul go free"; and

WHEREAS, educated at Alabama State Laboratory School, and at Southern Normal High School in Brewton, Alabama, Dabney Smiley earned the B.S. degree from Fisk University, and his entire professional career reflected his commitment to education in such capacities as coach, teacher and athletic director in Eufaula, Opelika and Montgomery; and

WHEREAS, he also served as Director of the Planning Division and Equal Opportunity Officer for the Autauga, Elmore, Montgomery Manpower Consortium; Manpower Development Specialist and Regional Coordinator, Alabama Department of Mental Health; and as UniServ Director, Montgomery County (AEA); and

WHEREAS, included among his many civic, community and fraternal affiliations were the Montgomery County Education Association, NEA, AEA, Montgomery County Board of Registrars, Omega Psi Phi Fraternity, Jack and Jill of America, Inc., and Cleveland Avenue YMCA Young Men's Forum; and

WHEREAS, the death of Robert Dabney Smiley, Jr., has indeed left an unfathomable void in the life of the community, and in the hearts of his loving family, many friends, and all those privileged to share the joy and happiness of his life; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we grievously mourn the death of Robert Dabney Smiley, Jr., of Montgomery, Alabama, and extend heartfelt sympathy to his wife, Sylvia Brandon Smiley; children, Robert Crosby and Lydia Nichole Smiley; to his mother, Mrs. Ida Belle Smiley; and to other family members, whose sorrow we share and for whom a copy of this resolution shall be provided.

Approved October 6, 1992

Time: 4:40 P.M.

Act No. 92-675

S. 22 – Senator Mitchem

AN ACT

To define the crime of stalking and the crime of aggravated stalking; to define terms; and to prescribe the relationship between this act and other provisions of law when the same conduct is proscribed by them.

Be It Enacted by the Legislature of Alabama:

Section 1. (a) A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking.

(b) The crime of stalking is a Class C felony.

Section 2. (a) A person who violates the provisions of Section 1(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking.

(b) The crime of aggravated stalking is a Class B felony.

Section 3. For purposes of this act only:

(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.

(b) "Credible threat" means a threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.

(c) "Harasses" means engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

Section 4. This act shall not be construed to repeal other criminal laws. Whenever conduct prescribed by any provision of this act is also prescribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

Section 5. This act shall be construed and, if necessary, reconstrued to sustain its constitutionality.

Section 6. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 5:45 P.M.

Act No. 92-676

H. 28 – Rep. Turner

AN ACT

To authorize the Director of the Department of Public Safety to provide certain criminal history information on individuals for a fee; prescribe penalties for violations of this act; and make an appropriation from the Public Safety Automated Fingerprint Identification System Fund to the Department of Public Safety.

Be It Enacted by the Legislature of Alabama:

Section 1. When used in this act, the following terms have the following meanings, respectively, unless the context clearly indicates a different meaning:

(1) “Criminal history information.” Information collected and stored in the criminal record repository of the Department of Public Safety reflecting the result of an arrest, detention, or initiation of a criminal proceeding by criminal justice agencies, including, but not limited to, arrest record information, fingerprint cards, correctional induction and release information, identifiable descriptions and notations of arrests, detentions, indictments, or other formal charges. The term shall not include analytical records or investigative reports that contain criminal intelligence information or criminal investigation information.

(2) “Criminal Justice Agency.” Any municipal, county, state or Federal agency whose personnel have power of arrest and who perform a law enforcement function. This definition shall also include the Attorney General of the State of Alabama, all Federal and state prosecuting attorneys, and all municipal, state, and Federal judges.

(3) “Department.” The Department of Public Safety.

(4) “Director.” The Director of the Department of Public Safety.

(5) “Person.” Any individual, partnership, corporation, association, business, government, governmental subdivision or agency, or any other public or private entity.

Section 2. (a) The director may open to any person for inspection, copying, and mechanical reproduction, during the department’s regular business hours, criminal history information on any individual, if the individual has given written permission for the release of the information to the requester and if the opening of the information is not forbidden by order of any court of competent jurisdiction or by federal law. Any person requesting criminal history information from the department must present to the department, along with the request, a copy of the required written permission.

(b) The director shall establish and collect a nonrefundable fee for costs incurred by the department in providing the requested criminal history information. The fee shall be twenty-five dollars (\$25). The proceeds shall be deposited in the State Treasury to the credit of the Public Safety Automated Fingerprint Identification System Fund, which is hereby created. All money deposited in the State Treasury to the credit of the Public Safety Automated Fingerprint Identification System Fund shall be expended for the department's administrative costs for maintaining and providing the information and for operations and maintenance of the Automated Fingerprint Identification System. No money shall be withdrawn or expended from the fund for any purpose unless the money has been allotted and budgeted in accordance with Article 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41 of the Code of Alabama 1975, and only in the amounts and for the purposes provided by the Legislature in the general appropriations bill or other appropriation bills.

(c) Criminal justice agencies and the Alabama Peace Officers Standards and Training Commission requests for criminal history information are hereby exempted from the fee requirements in (b) above except when such requests pertain to municipal or county ordinances intended to screen perspective employees of private entities.

(d) Requests for national criminal history record access, authorized by Federal law, passing through the criminal record repository of the Department to the Federal Bureau of Investigation require the submission of an additional fee as specified by the Federal Bureau of Investigation to cover their costs of processing the request. In addition to the fee specified in (b) above the director shall collect a fee and deposit same into the Public Safety Automated Fingerprint Identification System Fund for payment of the fee specified by the Federal Bureau of Investigation for national criminal history record access.

Section 3. In accordance with the Administrative Procedure Act, the director shall promulgate reasonable procedures and regulations for the implementation of this act.

Section 4. Any person who willfully disseminates information other than the information authorized by this act, is guilty of a Class C misdemeanor and upon conviction thereof shall be punished as prescribed by law.

Section 5. In addition to any and all other funds heretofore or hereinafter appropriated to the Department of Public Safety, there is hereby appropriated from the Public Safety Automated Fingerprint Identification System Fund to the Department of

Public Safety, for the fiscal year ending September 30, 1993, the sum of one hundred fifty thousand dollars (\$150,000). The appropriation provided in this section shall be expended for the purposes enumerated in this act.

Section 6. This act shall become effective on the first day of the month following its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:41 P.M.

Act No. 92-677

H. 29 – Rep. Turner

AN ACT

To levy upon each person convicted of a crime in a municipal, district or circuit court a criminal history processing fee; to provide that the fee shall be deposited into the Public Safety Automated Fingerprint Identification System Fund and the Court Automation Fund and to provide appropriations therefrom.

Be It Enacted by the Legislature of Alabama:

Section 1. In addition to all other costs, fees, or fines prescribed by law, each person convicted of a crime in a municipal, district or circuit court, except traffic cases which do not involve driving under the influence of alcohol or controlled substances as set out in Section 32-5A-191, Code of Alabama 1975, and conservation cases and juvenile cases shall be assessed a criminal history processing fee of ten dollars. Such assessment shall be automatically assessed by the Clerk of the court upon conviction.

Section 2. There is created in the State Treasury a fund to be designated as the Public Safety Automated Fingerprint Identification System Fund and a fund to be designated as the Court Automation Fund. Seven dollars of each additional fee collected pursuant to this act shall be deposited into the State Treasury to the credit of the Public Safety Automated Fingerprint Identification System Fund and three dollars to the Court Automation Fund. All money deposited in the State Treasury to the credit of the Public Safety Automated Fingerprint Identification System Fund shall be expended for operations and maintenance of the Automated Fingerprint Identification System. All money deposited in the State Treasury Court Automation Fund shall be expended for equipment, operations, supplies, maintenance, and training related to court automation, court cost collection and the timely and efficient processing of court cases. No

money shall be withdrawn or expended from these funds for any purpose unless the money has been allotted and budgeted in accordance with Article 4 (commencing with Section 41-4-80) of Chapter 4 of Title 41 of the Code of Alabama 1975, and only in the amounts and for the purposes provided by the Legislature in the general appropriations bill or other appropriation bills.

Section 3. In addition to any and all other funds heretofore or hereinafter appropriated to the Department of Public Safety, there is hereby appropriated from the Public Safety Automated Fingerprint Identification System Fund to the Department of Public Safety, for the fiscal year ending September 30, 1993, the sum of nine hundred thousand dollars (\$900,000). The appropriation provided in this section shall be expended for operations and maintenance of the Automated Fingerprint Identification System. In addition to any and all other funds heretofore or hereinafter appropriated to the Unified Judicial System, there is hereby appropriated from the Court Automation Fund to the Unified Judicial System, for the Fiscal Year ending September 30, 1993, the sum of four hundred thousand dollars (\$400,000) for expenditures authorized for this fund.

Section 4. This act shall become effective on the first day of the second month following its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:42 P.M.

Act No. 92-678

H. 47 – Rep. Turnham

AN ACT

This bill amends Section 32-6-1, Code of Alabama 1975, to delete the requirement that the Department of Public Safety shall mail renewal notices to each licensee at least 30 days prior to the expiration date of a driver's license; to provide for notification after 30 days if driver's license has not been renewed and to provide for a 60-day grace period.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 32-6-1, Code of Alabama 1975, is hereby amended to read as follows:

“Section 32-6-1.

“(a) Every person, except those specifically exempted by statutory enactment, shall procure a driver’s license before driving a motor vehicle upon the highways of this state. Every new resident of the state of Alabama shall procure an Alabama driver’s license within 30 days after establishing residence in this state.

“(b) Each original driver’s license issued to a person born in a year ending in an odd number shall expire on the second anniversary of the licensee’s birth date occurring in an odd-numbered calendar year after the date on which the application for the license was filed, and each original driver’s license issued to a person born in a year ending with an even number shall expire on the second anniversary of the licensee’s birth date occurring in an even-numbered calendar year after the date on which the application for the license was filed; provided, that if the license issued would expire in less than 24 months from the date on which the application for the license was filed, the expiration date of such license is hereby extended for an additional period of two years. After the expiration of an original driver’s license, all subsequent renewals shall be for a period of four years from the specified expiration date of the immediately preceding license, regardless of when such renewal shall be issued. Every driver’s license issued under this article may be renewed at the end of the license period without examination upon application and payment of the fee. For the purpose of renewal of a driver’s license, the department of public safety shall mail renewal notices to each licensee 30 days after expiration date if the driver’s license has not been renewed. A grace period of 60 days after expiration date of a driver’s license shall exist for the purpose of driver’s license renewal and the driver’s license shall be valid for this time period. The applicant shall apply for a driver’s license anytime during a period beginning 30 days before the expiration date of the then current license until **one year after the expiration date of said license**. Failure to make application for renewal within the specified time shall result in the applicant being required to take, and successfully pass, a written examination and driving test as administered by the department of public safety. If any person’s birthday is February 29, the first day of March following shall be regarded as his birthday for the purposes of this section.

“(c) The department of public safety shall make available to any resident of this state who does not hold a valid Alabama driver’s license a nondriver identification card to be used for identification purposes only. Such nondriver identification card shall be issued only upon application of the nondriver and shall be similar to the driver’s license; except, that it shall bear the word “nondriver” in prominent letters on the face of the identification card. Each nondriver identification card shall bear thereon a distinguishing

number assigned to the nondriver and a color photograph of the nondriver, as well as the name, birth date, residence address and a brief description of the nondriver, who for the purpose of identification, shall immediately upon receipt thereof, endorse his or her usual signature in ink upon the card in the space provided thereon, unless a facsimile of the nondriver signature appears thereon. The same degree of proof of identification required of applicants for driver's licenses in this state shall be required of applicants for non-driver identification cards."

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 6, 1992

Time: 4:43 P.M.

Act No. 92-679

S. 13 – Senator Corbett

AN ACT

Relating to Barbour County; creating and establishing a personnel system for the county under a personnel board; and providing for the composition, powers, duties, functions, and expenses of the board and for the selection and compensation of its members.

Be It Enacted by the Legislature of Alabama:

Section 1. Purpose. It is the purpose of this act to create and establish a county-wide personnel system in Barbour County based on principles of human resource management which shall include equity, fairness, and compliance with all applicable state and federal laws.

Section 2. Definitions. For purposes of this act, the following words and terms shall have meanings ascribed to them as follows:

(1) **CLASSIFIED EMPLOYEE.** An individual who is assigned to an on-going position, full or part-time, authorized by the county commission and whose salary is paid with funds allocated by the county commission, regardless of the source of those funds, and who must initially complete a probationary period.

(2) **FULL-TIME EMPLOYEE.** An individual who works for the county on an on-going basis and is regularly scheduled to work the county's established full-time work week as defined by the county commission.

(3) **PART-TIME EMPLOYEE.** An individual who works for the county on an on-going basis but is regularly scheduled to work less than the hours established for full-time employees as defined by the county commission.

(4) **TEMPORARY EMPLOYEE.** An individual who works for the county for a predetermined time period that is no more than 12 months.

(5) **UNCLASSIFIED EMPLOYEE.** An individual who works for the county and whose employment is the same as a classified employee except that he or she serves at the pleasure of an elected official.

(6) **VACANCY.** A position approved and funded by the county commission which is currently unoccupied.

Section 3. Establishment and Guidelines. There is established a personnel system for Barbour County based on the following principles:

(a) recruiting, selecting, and advancing employees based on their ability, knowledge, and skills, including the open competition of qualified applicants for initial and subsequent appointment;

(b) providing fair and equitable pay based on a compensation schedule consistent with the principle of pay equity;

(c) providing training for employees, as needed, to assure quality job performance;

(d) retaining employees on the basis of county needs, adequacy of their performance, and meeting reasonable standards of conduct;

(e) disciplining employees, to include discharge, when such action is in the best interests of the county;

(f) providing classified employees and other employees, as defined by the county commission, a grievance procedure for appealing final personnel actions, to include disciplinary and administrative actions; and

(g) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, sex, race, color, religion, national origin, disability, or age.

Section 4. Personnel System. All personnel activities required to create and administer the personnel system authorized by this act shall be based upon rules, policies, and procedures adopted by the Barbour County Commission. All county employees shall be hired, retained, and separated based on such rules, policies, and procedures. The personnel system established herein shall apply to all employees except:

(a) Elected officials.

(b) Members of appointed boards and commissions.

(c) Volunteer personnel who receive no compensation from the county.

(d) Persons performing work under contract with the county and not carried on the payroll as employees.

(e) Persons whose employment is subject to the approval of the United States Government or the State of Alabama.

(f) Unclassified employees.

Section 5. Continuation of Employment. The employment of all individuals covered by this act shall be contingent upon:

(a) Availability of funds.

(b) Need for the work to be done.

(c) Compliance with all rules, policies, and procedures established in accordance with this act.

(d) Completion of a satisfactory probationary period.

(e) Continued satisfactory job performance by the employee.

Section 6. Administration by the County Commission. The Barbour County Commission shall have the authority to develop, adopt, and administer rules, policies, procedures, and other documents as may be necessary to implement the intent of this act. The commission may employ, at its discretion, personnel it deems necessary to assist in the administration of the county personnel system.

Section 7. Appointing Authority. Under the personnel system, the appointing authority in Barbour County shall be the Barbour County Commission. The county commission may also designate other appointing authorities. Appointing authorities shall be authorized to hire individuals to fill approved vacancies and to supervise, discipline, and separate employees from county employment so long as such actions are consistent with this act and the rules, policies, and procedures established by the county commission.

Section 8. Personnel Board. (a) There is created the Barbour County Personnel Board. The personnel board shall be composed of five persons. The board members shall be registered voters and residents of the county. No member of the board, while a member of the board or for a period of one year after he or she ceases to be a member, may be eligible for appointment to, or election to, any county elective office. Two members shall be appointed to the board

by a consensus of the county commission. Two members shall be elected to the board by vote of the classified employees of the county in an election conducted pursuant to election procedures and regulations promulgated and administered by the judge of probate of the county. The election procedures and regulations shall provide for nominations and balloting. One member shall be appointed by agreement of the appointed members and the elected members. The county employees shall vote for two personnel board members from a list of persons recommended by the county classified employees. Each eligible employee shall be given the opportunity to vote for two persons to serve as the employee representatives on the personnel board. The individuals receiving the greatest number of votes shall be the employee personnel board members.

(b) No person who holds an elected county office, or who is a candidate for an elected county office, or receives a salary from the county shall serve on the board. The term of a board member shall be terminated if he or she is no longer eligible for membership on the board. When a board seat is vacated, the group which initially appointed or elected a board member shall, in like manner, appoint or elect another board member, as soon as possible. The replacement member shall serve the remainder of the unexpired term.

(c) Each member of the board shall serve a three-year term with the exception of the initial members of the board. The initial members shall draw lots to determine the two members who shall serve for three years, the two members who shall serve for two years, and the member who shall serve for one year. Members may be reappointed or reelected so as to serve a total of no more than two complete terms.

(d) The county commission may provide all necessary clerical and administrative support for the board. The commission may **employ an individual or designate an existing employee to provide the support.**

The board shall meet as often as necessary to conduct the business of the board. Each year, after advertisement in each newspaper published in Barbour County for three consecutive weeks, the members of the board shall select a member to serve as chairperson for 12 months. This meeting shall be an open and public meeting. The board members may be compensated for their services as provided, from time to time, by the county commission. Three members of the board shall constitute a quorum for the transaction of business.

Section 9. Personnel Board Procedure. The personnel board shall hear all appeals from final personnel action as requested by an affected and eligible employee. Eligible employees shall include

regular status classified employees and may include other employees as authorized by the county commission so long as the inclusion does not violate the intent of this act. The board shall hear the appeals in accordance with guidelines written by the board, with the advice of the Barbour County Commission. Final personnel action shall include administrative action, action based on the rules, policies, and procedures of the county, and disciplinary action. All appeals shall be made in good faith and timely filed. Willfully filing an appeal based on false facts or solely for the purpose of harassment may be grounds for disciplinary action.

Hearings before the personnel board shall not be evidentiary hearings, or follow the formalities of a court of law, or require that the rules of evidence be followed. However, all testimony shall be under oath and the board shall have the power to subpoena witnesses and demand production of relevant documents and things. The personnel board shall adopt its own rules regarding the guidelines to be used in conducting hearings. The personnel board shall have the authority to render a decision at the conclusion of a hearing. The decision may uphold, reverse, or amend any prior action. All decisions shall be made within 10 days of the board's receipt of the employee's appeal and shall be supported by factual findings based on the hearing, appropriate law, and approved personnel rules, policies, and procedures. The decision of the personnel board shall be binding on all parties. Only after all administrative remedies have been exhausted may an affected party take an appeal to the circuit court of Barbour County. The appeal to the circuit court shall be de novo. The board shall maintain sufficient records to document its decisions and actions in any matter.

Section 10. Employment. All classified employees shall be hired from a list of job applicants who meet the job related qualifications for a vacancy. Other employees will be employed in accordance with procedures established by the Barbour County Commission.

The judge of probate, sheriff, tax assessor, tax collector, and the county commission as a collective body shall each be authorized to employ on a discretionary basis, one employee to serve as a principal assistant in that office. The persons so employed shall be unclassified employees and need not be hired from a list of applicants, but must meet the job qualifications for the position to which they are to be appointed. The county commission may authorize additional unclassified employees, but it is the intent of this act to keep the assistants to a minimum. If two or more elected offices are combined, the elected official shall have no more than one unclassified employee unless additional unclassified employees are approved by the county commission.

Section 11. Political Activity. Any employee may participate in city or state political activities to the same extent that any citizen of Alabama may so participate. This activity may include endorsing a candidate and contributing to campaigns. Employees may join local political organizations, and state and national political parties. Employees may also support issues of public welfare, circulate petitions, and make contributions.

Section 12. Subsequently Created Elected Office. For the purpose of this act, the elected offices in Barbour County are: the county commission, sheriff, tax assessor, and the tax collector. Any subsequent change in the number, scope, title, or other aspect of these offices is subsumed within this act.

Section 13. Effective Date. This act shall be effective the first day of the first month after its passage and approval by the Governor, or its otherwise becoming a law.

Approved October 7, 1992

Time: 4:45 P.M.

Act No. 92-680

S. 15 – Senator Mitchell

AN ACT

Relating to Crenshaw County; providing further for the compensation of poll workers.

Be It Enacted by the Legislature of Alabama:

Section 1. In Crenshaw County, election officials who work at polling places may receive an additional expense allowance in an amount as will, together with any amount paid by the state pursuant to Section 17-6-13, Code of Alabama 1975, make the total amount paid to each official fifty dollars (\$50) for each day the official works at the polls. The additional expense allowance provided for in this act shall be paid from the county general fund.

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 4:46 P.M.

Act No. 92-681

S. 52 – Senator Windom

AN ACT

To amend Section 6-10-7 of the Code of Alabama 1975, to allow a garnishee to make payments of proceeds retained in accordance to a writ of garnishment as the proceeds are received and to allow the court upon written request of the plaintiff to distribute the funds to the plaintiff or plaintiff's attorney, and to provide that this amendment shall be retroactive to June 10, 1975.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 6-10-7 of the Code of Alabama 1975, is amended to read as follows:

“§6-10-7.

“(a) The wages, salaries, or other compensation of laborers or employees, residents of this state, for personal services, shall be exempt from levy under writs of garnishment or other process for the collection of debts contracted or judgments entered in tort in an amount equal to 75 percent of such wages, salaries, or other compensation due or to become due to such laborers or employees, and the levy as to such percentage of their wages, salaries, or other compensation shall be void. The court issuing the writ or levy shall show thereon the amount of the claim of the plaintiff and the court costs in the proceedings. If at any time during the pendency of the proceedings in the court a judgment is entered for a different amount, then the court shall notify the garnishee of the correct amount due by the defendant under the writ or levy. The garnishee shall retain 25 percent of the wages, salaries, or other compensation of the laborer or employee during the period of time as is necessary to accumulate a sum equal to the amount shown as due by the court on the writ or levy. Should the employment of the defendant for any reason be terminated with the garnishee, then the garnishee shall not later than 15 days after the termination of employment, report the termination to the court and pay into court all sums withheld from the defendant's wages, salaries, or other compensation. If the plaintiff in garnishment contests the answer of the garnishee, as now provided by law in such cases, and proves to the court the deficiency or untruth of the garnishee's answer, the court shall enter judgment against the garnishee for such amount as would have been subject to the order of condemnation had the sum not been released to the defendant.

“(b) The garnishee shall, after a period of thirty days from the first retention of any sum from the defendant's wages, salaries, or other compensation, commence paying the funds into court, as they are deducted or withheld and continue to do so on a monthly or more frequent basis until the full amount is withheld. Upon

receipt by the court of a written request by the plaintiff, the court may enter an order of condemnation of said funds received and thereupon disburse the same to the plaintiff.”

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. The provisions of this act are curative and remedial and shall have retroactive effect to June 10, 1975, and any actions taken or payment made in accordance with the provisions of this act since that date are ratified, validated, and confirmed.

Section 5. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 4:47 P.M.

Act No. 92-682

S. 26 – Senator Floyd

AN ACT

To amend Sections 13A-8-4 and 13A-8-5, Code of Alabama 1975, relating to the value of property for a theft of property to constitute theft of property in the second or third degree.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 13A-8-4, Code of Alabama 1975, is amended to read as follows:

“§13A-8-4.

“(a) The theft of property which exceeds two hundred fifty dollars (\$250) in value but does not exceed one thousand dollars (\$1,000) in value, and which is not taken from the person of another, constitutes theft of property in the second degree.

“(b) Theft of property in the second degree is a Class C felony.

“(c) The theft of a credit card or a debit card, regardless of its value, constitutes theft of property in the second degree.

“(d) The theft of a firearm, rifle, or shotgun, regardless of its value, constitutes theft of property in the second degree.

“(e) The theft of any substance controlled by chapter 2 of Title 20 or any amendments thereto, regardless of value, constitutes theft of property in the second degree.

“(f) The theft of any livestock which includes cattle, swine, horses, mules, asses, or sheep, regardless of their value, constitutes theft of property in the second degree.

“(g) Notwithstanding subsection (a), the theft of property which exceeds one hundred dollars (\$100) in value but does not exceed one thousand dollars (\$1,000) in value, and which is not taken from the person of another, where the defendant has previously been convicted of a theft of property in the first or second degree, constitutes theft of property in the second degree.”

Section 2. Section 13A-8-5, Code of Alabama 1975, is amended to read as follows:

“§13A-8-5.

“(a) Except as provided in subsection (g) of Section 13A-8-4, the theft of property which does not exceed two hundred fifty dollars (\$250) in value and which is not taken from the person of another constitutes theft of property in the third degree.

“(b) Theft of property in the third degree is a Class A misdemeanor.”

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 4:48 P.M.

Act No. 92-683

S.J.R. 16 – Senator Lipscomb

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF THE REVEREND PAUL WAYNE MARTIN.

WHEREAS, the Reverend Paul Wayne Martin, Pastor of the First Baptist Church of Fairhope, Alabama, died unexpectedly September 16, 1992, at the age of 51; and

WHEREAS, the Reverend Martin’s untimely passing has deeply shocked and saddened his family, friends, associates, and

members of the First Baptist Church, as well as the Fairhope community; and

WHEREAS, Reverend Martin was born in Greensboro, Alabama, and lived most of his early life in Sumter County; and

WHEREAS, prior to entering the Baptist ministry, Reverend Martin graduated from Samford University and the Southeastern Baptist Theological Seminary in Wake Forest, North Carolina; he served pastorates at Friendship Baptist Church in Boligee, Alabama; Lisman Baptist Church in Lisman, Alabama; Bayleaf Baptist Church in Raleigh, North Carolina; Brent Baptist Church in Brent, Alabama; and Eastmont Baptist Church in Montgomery, Alabama, before serving First Baptist Church of Fairhope, Alabama, since March 15, 1987; and

WHEREAS, his 32 years' service to the Baptist ministry also included service in numerous capacities with the Alabama Baptist State Convention; teaching at Howard College Extension; speaking for the Alabama Baptist Deacon Retreat; various positions on the Baptist Associational level; Board of Directors of Baptist Medical Center of Montgomery, Alabama; and Chaplain Ministry at Thomas Hospital in Fairhope, Alabama; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we mourn the sudden and tragic death of Reverend Paul Wayne Martin, and praise him for his dedicated service to the Baptist ministry.

BE IT FURTHER RESOLVED, we extend our heartfelt sympathy to his wife, Martha Bell Martin; his daughters, Cheryl Cortinas, Paula Fargarson, and Pamela Martin; his father, Paul F. Martin; and his brother, David Martin; now therefore,

RESOLVED FURTHER, That a copy of this resolution be sent to his family.

Approved October 7, 1992

Time: 4:49 P.M.

Act No. 92-684

S.J.R. 17 – Senators Little and Foshee

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF ANDREW S. FLOYD OF ANDALUSIA, ALABAMA.

WHEREAS, the Alabama Legislature grievously records the death of Andrew S. Floyd of Andalusia, Alabama, on August 26, 1992, at the age of 77 years; and

WHEREAS, although a native of Atlanta, Georgia, Andrew "Andy" Floyd had resided in Andalusia since 1949 when he became manager of the Andalusia Area Chamber of Commerce (AACC), and, in 1990, he was selected as the recipient of the Chamber's 1990 President's Award, in recognition of his many outstanding contributions to the community as chamber manager, and as chairman of the industrial board and a trustee of the industrial park; and

WHEREAS, Andy Floyd, as manager of AACC and in many other capacities, was instrumentally involved in the growth and progress that the Andalusia area has enjoyed for more than four decades, and greatly to his credit are numerous new and expanded businesses and industry throughout the area; and

WHEREAS, Mr. Floyd also was responsible for a number of "firsts" for the City of Andalusia, including the first United Fund Drive, and the first Santa Claus and Christmas lights in downtown Andalusia, which was the first city in the state to use the Wallace-Cater Act for industrial development; and

WHEREAS, the death of Andy Floyd has indeed left an unfathomable void in the life of his community and the State of Alabama, and in the hearts of his family and many friends who are sorely bereft in their great and grievous loss; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we grievously mourn the death of Andrew S. Floyd of Andalusia, Alabama, and extend deepest sympathy to his wife, Mrs. Edith Floyd; son and daughter-in-law, Thomas and Lois Floyd; to his grandchildren, Bonnie and Jennifer; and other family members, whose sorrow we share and to whom a copy of this resolution shall be forwarded.

Approved October 7, 1992

Time: 4:50 P.M.

Act No. 92-685

S.J.R. 18 – Senator J. Smith

SENATE JOINT RESOLUTION

EXPRESSING LEGISLATIVE INTENT AS TO ACT 91-657

WHEREAS, it was the intent of the legislature in passing Act 91-657 to give a "distinctive" license plate to any winner of the Purple Heart Medal, and

WHEREAS, the sponsor of the bill displayed the design of the distinctive tag to the other members of the legislature during debate on said act, and

WHEREAS, the State Revenue Department has not begun production of said distinctive plate, and

WHEREAS, the State Revenue Department has indicated they would like to have a clearer indication of legislative intent on this issue,

THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALABAMA, BOTH HOUSES CONCURRING, That it was the intent of the legislature in passing Act 91-657 that winners of the Purple Heart Medal be issued a distinctive license plate emphasizing that the bearer of said license plate has indeed won the Purple Heart Medal.

BE IT FURTHER RESOLVED, That the State Finance Department and the Department of Corrections use the design that has previously been transmitted to them by the Alabama Chapter, Military Order of the Purple Heart.

BE IT FURTHER RESOLVED, That since most of the recipients of the Purple Heart Medal are now senior citizens, the State Finance Department and the Department of Corrections commence production and distribution of the distinctive tag as soon as is conceivably possible.

BE IT FURTHER RESOLVED, That a copy of this resolution be delivered to the State Finance Director and the Director of the Department of Corrections.

Approved October 7, 1992

Time: 4:51 P.M.

Act No. 92-686

S.J.R. 22 – Senators Corbett, Amari, Bailey, Barron, Bedsole, Bennett, Bolling, Campbell, deGraffenried, Denton, Dial, Dixon, Ellis, Figures, Floyd, Foshee, Ghee, Hale, Hilliard, Horn, Langford, Lindsey, Lipscomb, Little, Mitchell, Mitchem, Owens, Parsons,

Sanders, B. Smith, J. Smith,
Waggoner, Wilson and
Windom

SENATE JOINT RESOLUTION

MOURNING THE DEATH OF ZORA ELMA LANSDELL CAMPBELL OF TOWN CREEK, ALABAMA.

WHEREAS, it is with profound sorrow and a deep sense of loss that the Alabama Legislature records the death of Zora Elma Lansdell Campbell of Town Creek, Alabama, on September 21, 1992, at the age of 91 years; and

WHEREAS, born December 3, 1900, Zora Campbell was the widow of John Luther Campbell and an active and faithful member of Providence Baptist Church; and

WHEREAS, a much loved and respected member of the Town Creek community, she will be greatly missed by all who were fortunate enough to know her; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we are deeply saddened by the death of Zora Elma Lansdell Campbell and, in this time of sorrow, extend our deepest and most heartfelt sympathy to her sons, Luther Carl Campbell, John V. Campbell and our friend and colleague, Senator Ray Campbell; to her daughters, Clara Campbell Parker, Glenn Campbell, Ruby Campbell, Ruth Campbell Ault, Mabel Campbell Patterson, Marcilla Campbell Weems, and Joyce Campbell Moore; to her brother, Hearn Lansdell; eleven grandchildren and ten great-grandchildren; and to other family members, for whom a copy of this resolution shall be provided.

Approved October 7, 1992

Time: 4:52 P.M.

Act No. 92-687

S.J.R. 23 – Senators Bennett and Parsons

SENATE JOINT RESOLUTION

COMMENDING ARNOLD N. BURGESS AFTER THREE TERMS AS MAYOR OF MIDFIELD.

WHEREAS, Arnold N. Burgess will officially retire October 4, 1992 as mayor of Midfield after three terms in office; and

WHEREAS, appointed to fill the unexpired term of Mayor Winifred Jackson in 1981, Mayor Burgess won election in his own right in 1984 and 1988; and

WHEREAS, Mayor Burgess, who served on the City Council from 1977 to 1981 was elected Mayor pro-tem in 1980; and

WHEREAS, during his term in office, he was instrumental in construction of a new city hall and fire department, a new library and senior citizens building, as well as other city improvements including installation of the E-911 system and

WHEREAS, retired from U.S. Steel, Mayor Burgess is active in his community and teaches Sunday School at Fairfield Highlands Baptist Church; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That this legislature does hereby commend Mayor Burgess on 15 years of dedicated public service and outstanding leadership.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to Mayor Burgess with the Legislature's gratitude and best wishes for the future.

Approved October 7, 1992

Time: 4:53 P.M.

Act No. 92-688

S. 20 – Senator Owens

AN ACT

To amend Section 14-8-6 of the Code of Alabama 1975, to allow the Department of Corrections to withhold up to 40 percent of an inmate's earnings to cover costs incident to the inmate's confinement; and to make a supplemental appropriation to the Department of Corrections from the net revenues generated by this act for the fiscal year ending September 30, 1993.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 14-8-6 of the Code of Alabama 1975, is amended to read as follows:

“§14-8-6.

“The employer of an inmate involved in work release shall pay the inmate's wages directly to the department of corrections. The department may adopt regulations concerning the disbursement of any earnings of the inmates involved in work release. The department is authorized to withhold from an inmate's earnings the cost

incident to the inmate's confinement as the department shall deem appropriate and reasonable. In no event shall the withheld earnings exceed 40 percent of the earnings of the inmate. After all expenses have been deducted by the department, the remainder of the inmate's earnings shall be credited to his or her account with the department. Upon his or her release all moneys being held by the department shall be paid over to the inmate."

Section 2. The net revenues generated by this act are appropriated for the fiscal year ending September 30, 1993 to the Department of Corrections and are supplemental to any and all other prior or subsequent appropriations made.

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 4:54 P.M.

Act No. 92-689

S. 21 – Senator Owens

AN ACT

To amend Section 15-22-54 of the Code of Alabama 1975, relating to revocation or modification of probation or a suspension of the execution of sentence.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 15-22-54 of the Code of Alabama 1975, is amended to read as follows:

"§15-22-54.

"(a) The period of probation or suspension of execution of sentence shall be determined by the court, and the period of probation or suspension may be continued, extended, or terminated. However, in no case shall the maximum probation period of a defendant guilty of a misdemeanor exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years. When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant.

“(b) The court granting probation may, upon the recommendation of the officer supervising the probationer, terminate all authority and supervision over the probationer prior to the declared date of completion of probation upon showing a continued satisfactory compliance with the conditions of probation over a sufficient portion of the period of the probation.

“(c) At any time during the period of probation or suspension of execution of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence.

“(d) Except as provided in Chapter 15 of Title 12 of the Code of Alabama 1975, any probation officer, police officer, or other officer with power of arrest, when requested by the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant, the arresting officer shall have a written statement by the probation officer setting forth that the probationer has, in his or her judgment, violated the conditions of probation, and the statement shall be sufficient warrant for the detention of the probationer in the county jail or other appropriate place of detention until the probationer is brought before the court. The probation officer shall forthwith report the arrest and detention to the court and submit in writing a report showing in what manner the probationer has violated probation.

“(1) If the defendant violates a condition of probation or suspension of execution of sentence, the court, after a hearing, may implement one or more of the following options:

“a. Continue the existing probation or suspension of execution of sentence.

“b. Issue a formal or informal warning to the probationer that further violations may result in revocation of probation or suspension of execution of sentence.

“c. Conduct a formal or informal conference with the probationer to reemphasize the necessity of compliance with the conditions of probation.

“d. Modify the conditions of probation or suspension of execution of sentence, which conditions may include the addition of short periods of confinement.

“e. Revoke the probation or suspension of execution of sentence.

“(2) If the court revokes probation, it may, after a hearing, impose the sentence that was suspended at the original hearing or any lesser sentence, including any option listed in subdivision (1).

“(3) If revocation results in a sentence of confinement, credit shall be given for all time spent in custody prior to revocation. Full

credit shall be awarded for full-time confinement in facilities such as county jail, state prison, and boot camp. Credit for other penalties, such as work release programs, intermittent confinement, and home detention, shall be left to the discretion of the court, with the presumption that time spent subject to these penalties will receive half credit. The court shall also give significant weight to the time spent on probation in substantial compliance with the conditions thereof. The total time spent in confinement may not exceed the term of confinement of the original sentence.

“(4) The court shall not revoke probation and order the confinement of the probationer unless the court finds on the basis of the original offense and the probationer’s intervening conduct, either of the following:

“a. No measure short of confinement will adequately protect the community from further criminal activity by the probationer.

“b. No measure short of confinement will avoid depreciating the seriousness of the violation.”

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 4:55 P.M.

Act No. 92-690

S. 46 – Senator Horn

AN ACT

To make an appropriation for the support and maintenance of the Sickie Cell Education Program for the fiscal year ending September 30, 1993 and to require an operations plan and audited financial statement prior to release of any funds.

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby appropriated for the fiscal year ending September 30, 1993, the sum of eight hundred seventy-three thousand nine hundred eighty-five dollars (\$873,985), out of the funds in the Alabama Special Educational Trust Fund to the Sickie Cell Education Program as follows:

(a) Jefferson County Sick Cell Detection Committee, Inc.....	\$200,745
(b) Sick Cell Disease Association of Gulf Coast, Alabama	\$183,665
(c) Sick Cell Foundation of Greater Montgomery, Inc.....	\$68,529
(d) Southeast Alabama Sick Cell Association	\$131,267
(e) Tri-County West Central Alabama Sick Cell Anemia Association, Inc	\$84,192
(f) West Alabama Sick Cell Program	\$42,329
(g) North Alabama Sick Cell Program	\$90,063
(h) Children's Hospital of Birmingham	\$39,132
(i) Children's and Women's Hospital - Comprehensive Sick Cell Center	\$34,063

Section 2. Prior to release of any funds appropriated under this bill for fiscal year 1992-93, an operations plan for fiscal year 1992-93 and an audited financial statement for all operations during fiscal year 1990-91 must be forwarded to the Director of Finance. It is the intent to release fiscal year 1992-93 funds following receipt of these reports.

Section 3. This Act shall become effective October 1, 1992.

Approved October 7, 1992

Time: 4:56 P.M.

Act No. 92-691

H. 100 – Reps. Penry, McMillan

AN ACT

Relating to Baldwin County; to define a coroner's investigation; to provide for qualifications and training; to limit coroners' investigations; to provide the types of deaths the coroner shall investigate; to provide instances when postmortem examination and autopsies shall be performed by a state medical examiner; to provide for the taking charge of certain bodies and the authority to remove certain evidence from the body; to provide for the certification of certain deaths; to provide for the review of pertinent medical records and the power to subpoena said records; to require the reporting of deaths to the coroner and to prohibit altering a body or evidence; to provide for notification of next of kin and accounting for personal effects; to provide for the costs of assistance; to exempt the Baldwin County Coroner and state medical examiners from certain liability; to provide for the admission of

reports into evidence; and to provide that this act shall not apply in certain instances.

Be It Enacted by the Legislature of Alabama:

Section 1. CORONER'S INVESTIGATION. A coroner's investigation shall mean a process of collecting pertinent information concerning the circumstances surrounding the death of an individual, and background information, including all, but not limited to, medical information, which may be helpful in determining the cause and manner of death, or the identification of the deceased. A coroner's investigation does not include criminal investigation responsibilities.

Section 2. QUALIFICATIONS. The county coroner must have a high school education or an equivalent degree. The county coroner prior to beginning his or her first term and all deputy coroners prior to their first such appointment shall complete at least a 20-hour coroner's death investigation course comparable to the standard course designed for death investigators by the National Association of Medical Examiners. After their first year of service, all coroners and deputy coroners shall attend not less than 20 hours of coroner's death investigation training during each calendar year that they serve and certification made and recorded in the Probate Office of Baldwin County.

Section 3. LIMITATION OF A CORONER'S INVESTIGATION.

(a) A coroner's investigation is limited to inquiries for determining the cause and manner of death, the identity of the deceased, and circumstances surrounding death.

(b) If the coroner investigation reveals any evidence or suspicion of foul play in regard to the death, he or she shall immediately notify the proper law enforcement agency and shall cooperate fully in such law enforcement agency's criminal investigation.

Section 4. DEATHS TO BE INVESTIGATED BY THE BALDWIN COUNTY CORONER. The county coroner may conduct a coroner's investigation of any death in Baldwin County when the death shall fall within one or more of the following categories:

(1) Any death that occurs suddenly and unexpectedly, that is, when the person has not been under medical care for significant heart, lung, or other disease;

(2) Any death suspected to be due to violence, or resulting from suicidal, accidental or homicidal injury, regardless of when or where the injury occurred;

(3) Any death suspected to be due to alcohol, drugs or exposure to toxic agents;

- (4) Death due to poisoning;
- (5) All deaths of persons in the custody of law enforcement officers, penal institutions, or state mental institutions;
- (6) Deaths suspected to be involved with the decedent's occupation;
- (7) Death unattended by a physician;
- (8) Any death due to neglect;
- (9) Any stillbirth of 20 or more weeks' gestation unattended by a physician;
- (10) Deaths due to criminal abortion;
- (11) Any death of an infant or child under 19 years of age where the medical history has not established some preexisting medical condition to clearly explain the death and the preterminal circumstances;
- (12) Deaths which are possibly directly or indirectly attributable to environmental exposure not otherwise specified;
- (13) Any death suspected to be due to infectious or contagious disease wherein the diagnosis and extent of the disease at the time are undetermined;
- (14) Any death occurring under suspicious or unusual circumstances;
- (15) When a body is to be cremated, dissected or buried at sea; or
- (16) When a body is brought into the country without proper medical certification.

Section 5. POSTMORTEM EXAMINATION AND AUTOPSIES. When the Baldwin County Coroner determines a death under investigation is one described in Section 4 above, the coroner may, and upon request, shall be assisted by a state medical examiner in the Alabama Department of Forensic Sciences, as necessary, to help determine the cause and manner of death or to provide other information to the coroner or investigating law enforcement agency. The state medical examiner may, upon request, assist by reviewing the coroner's case file and the circumstances of the death, by conducting an external examination of the body, or by conducting an autopsy on the body under the following circumstances:

- (1) An autopsy or postmortem examination shall be performed by a state medical examiner at the written direction of the district

attorney or his or her authorized representative in any case in which the district attorney is conducting a criminal investigation.

(2) In a death where the Baldwin County coroner or state medical examiner does not deem it advisable and in the public interest that an autopsy be performed, the state medical examiner, or his or her designated pathologist, may perform the autopsy and the cost thereof shall be paid by the next of kin, funds to be deposited in the state treasury for the Department of Forensic Sciences.

Section 6. COUNTY CORONER OR STATE MEDICAL EXAMINER MAY TAKE CHARGE OF BODIES. While conducting a coroner's investigation of a death hereunder, the Baldwin County coroner or state medical examiner shall be authorized to take charge of the dead body, and he or she or a law enforcement officer having jurisdiction may take possession and examine or have examined related physical evidence on or about the body at the scene as may be useful in establishing identify of the deceased or the cause, manner and circumstances of death. The Baldwin County coroner is authorized to take or order the taking of certain tissues and fluids under Section 22-19-80 of the Code of Alabama 1975. When a state medical examiner takes charge of a body, he or she is authorized to take, retain and examine or have examined whatever tissues, biological fluids or other evidence from the body he or she deems necessary to determine the cause, manner, and circumstances of death and the identity of the deceased.

Section 7. RESPONSIBILITY TO CERTIFY DEATHS. If after conducting a coroner's investigation of a death, the Baldwin County coroner or the designated deputy coroner is satisfied that the death was not caused by a criminal act or omission, that there are no suspicious circumstances about the death, that the law enforcement agency of the jurisdiction has no questions about the death, and that he or she knows to a reasonable certainty the cause of death, then he or she or the designated deputy coroner may execute a death certificate in the form required by law and authorize release of the body for final disposition of a certificate as prescribed by the State Health Department. If the deceased is unidentified or if the Baldwin County coroner suspects a death was caused by a criminal act or omission or if the cause of death is obscure or if the law enforcement agency of the jurisdiction has questions about the death, the coroner shall ask a medical examiner for assistance in the death investigation. The state medical examiner or a qualified pathologist under his or her direction, may then execute a death certificate in the form required by law and authorize release of the body for final disposition on a certificate as prescribed by the State Health Department or provide the cause

and manner of death to the coroner so the coroner can execute the death certificate. If the state medical examiner executes the death certificate, he or she shall furnish a copy to the coroner at the time of execution.

Section 8. HOSPITAL AND MEDICAL RECORDS. While conducting a coroner's investigation of a death hereunder, the Baldwin County coroner or a state medical examiner or the director of the Alabama Department of Forensic Sciences is authorized to issue subpoenas for the production of pertinent medical records, radiographs and biological tissues and fluids as may be required by his investigation to determine the cause and manner of death.

Section 9. DUTY TO REPORT DEATHS; ALTERATION OF BODY EVIDENCE PROHIBITED. It shall be the duty and responsibility of any person in the county having knowledge concerning a death occurring under the categories defined in Section 4 of this act to report such death promptly to the Baldwin County coroner or to any law enforcement agency who, in turn, shall promptly report the same to the Baldwin County coroner. Deaths reportable to the Baldwin County coroner shall be reported whether the cause is known or suspected, primary or contributory, or recent, delayed, or remote. No one shall disturb or remove the body or human remains or evidence on the body until authorized by the Baldwin County coroner or his or her designee except for the purpose of preserving such body or remains from loss or destruction. No person shall knowingly fail to make such report or withhold related medical or other evidence, or willfully alter the body or related evidence without the authority of the county coroner and outside the exceptions stated.

Section 10. DUTY To NOTIFY NEXT OF KIN AND ACCOUNT FOR PERSONAL EFFECTS. The county coroner or any law enforcement officer having jurisdiction and with approval of the county coroner shall take possession of personal effects on or about the dead body and ascertain that the next of kin is notified in regard to the death. Such personal effects may: (1) be retained as evidence if deemed necessary, or (2) forthwith be returned to the next of kin.

Section 11. COST OF ASSISTANCE. The assistance provided by the Alabama Department of Forensic Sciences through its state medical examiners or other scientists, employees or agents shall be provided without fee to Baldwin County unless otherwise provided for by the law or agreement between the county governing body and the Alabama Department of Forensic Sciences.

Section 12. REPORTS AS EVIDENCE. The reports of death investigations conducted by the county coroner or by the Alabama

Department of Forensic Sciences, or true copies thereof duly certified by the county coroner or the director of the department, respectively, are admissible in any court in the county with or without testimony by the county coroner or Department of Forensic Sciences' officials. However, any person preparing a report given in evidence under this act may be summoned as a witness in any civil or criminal case by either party to the case.

Section 13. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 14. All laws or parts of laws which conflict with this act are hereby repealed.

Section 15. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:00 P.M.

Act No. 92-692

H. 66 – Rep. Gullatt

AN ACT

Relating to Russell County; authorizing the sheriff to operate a jail canteen and inmate telephone system and providing for the distribution of the profits; and establishing the "Inmate Welfare Fund"; and providing for the distribution of funds.

Be It Enacted by the Legislature of Alabama:

Section 1. The Sheriff of Russell County may operate a jail canteen and the inmate telephone system within the confines of the county jail to serve the needs of the county inmates. After the cost and operating expenses are deducted from the income, excluding any income from fees paid for the boarding and feeding of prisoners, the net revenues shall be deposited in the Inmate Welfare Fund which is hereby created.

Section 2. The Inmate Welfare Fund may be expended at the discretion of the sheriff for salaries, equipment, and supplies for the county jail.

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. This act is cumulative to any law providing funds for the operation of the Russell County Jail or for funds expended in the discretion of the Sheriff of Russell County.

Section 5. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:01 P.M.

Act No. 92-693

H.J.R. 94 – Rep. Haynes

HOUSE JOINT RESOLUTION

EXPRESSING LEGISLATIVE INTENT OF ACT NO. 92-498, H. 807, 1992 REGULAR SESSION.

WHEREAS, Act No. 92-498, H. 807, 1992 Regular Session, was approved May 15, 1992; and

WHEREAS, Act No. 92-498 purported to amend Section 4 of Act No. 87-422, H. 877, 1987 Regular Session; and

WHEREAS, Act No. 92-498 actually amended Section 4 of Act No. 87-423, H. 882, 1987 Regular Session, relating to the civil service system of the City of Talladega; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That it was the intent of the Legislature in the enactment of Act No. 92-498, H. 807, to amend Section 4 of Act No. 87-423, H. 882, 1987 Regular Session.

Approved October 7, 1992

Time: 5:02 P.M.

Act No. 92-694

H.J.R. 88 – Reps. Hooper, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, Bowling, Box, Bryant, Bugg, Burke, Buskey (JE), Buskey (JL), Butler, Cagle, Campbell, Carns, Carothers, Carter, Clark (J),

Clark (W), Clay, Collins, Cosby,
 Crow, Cullins, Curry, Dolbare,
 Drake, Escott-Russell, Flowers,
 Ford, Freeman, Fuller, Gaines,
 Gaston, Goodwin, Grayson,
 Gullatt, Hall, Hamilton,
 Hammett, Haney, Harper,
 Harvey, Hawkins, Haynes,
 Higginbotham, Hill, Hogan,
 Holladay, Holley, Holmes,
 Johnson, Kennedy, Knight,
 Kvalheim, Laird, Layson, Letson,
 Lindsey, Mathis, McClain,
 McDaniel, McDowell, McKee,
 McMillan, Melton, Mikell,
 Millican, Morrow, Morton,
 Newton (C), Newton (D),
 Parker (P), Parker (T), Payne,
 Penry, Perdue, Petelos, Poole,
 Powell, Rich, Richardson,
 Rockhold, Rogers (F), Rogers (J),
 Sanderford, Sanderson,
 Smith (C), Smith (R), Spratt,
 Starkey, Thomas, Turner,
 Turnham, Venable, Walker,
 Warren, White, Williams, Willis,
 Zoghby

HOUSE JOINT RESOLUTION

**COMMENDING DR. REXFORD KENNAMER FOR OUT-
 STANDING PROFESSIONAL ACHIEVEMENT AND CONTRI-
 BUTIONS TO THE MEDICAL PROFESSION.**

WHEREAS, in August 1992, the cardiac surgical group of Cedars-Sinai Medical Center announced the dedication of the cardiac surgical research laboratory in honor of Dr. Rexford Kennamer, of Beverly Hills, California; and

WHEREAS, one of the most celebrated physicians on the West Coast, Dr. Kennamer has counted among his patients such illuminaries as Elizabeth Taylor, Marilyn Monroe, Nancy Reagan, Gary Cooper, Jack Benny, Max Factor and Dr. Armand Hammer; and

WHEREAS, a native of Guntersville, Alabama, Rex Kennamer received his A.B. degree from the University of Alabama and his M.D. degree from Jefferson Medical College in Philadelphia; and

WHEREAS, following an internship and residency in internal medicine, Dr. Kennamer served his Cardiology Research

Fellowship at Cedars of Lebanon Hospital and UCLA, and entered private practice in Beverly Hills; and

WHEREAS, Dr. Kennamer who, over the course of his illustrious career, has served as Clinical Chief of Cardiology and as a member of the Board of Governors and Board of Trustees at the Cedars-Sinai Medical Center, has been recognized as a role model for young physicians by the A. B. Parvin Foundation which established a Fellowship Program in his honor at the UCLA Medical Center; he further has authored and co-authored numerous scientific papers and is the founder and president of the Western Cardiac Foundation which, along with Dr. Kennamer, has supported research and teaching throughout the country; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding professional achievement and contributions to the medical profession, we hereby most highly commend Dr. Rex Kennamer, for whom a copy of this resolution of sincere tribute and esteem shall be provided.

Approved October 7, 1992

Time: 5:03 P.M.

Act No. 92-695

H.J.R. 87 – Reps. Butler, Hall, Freeman, Sanderford, Grayson, Haney, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, **Bowling, Box, Bryant, Bugg,** Burke, Buskey (JE), Buskey (JL), Cagle, Campbell, Carns, Carothers, Carter, Clark (J), Clark (W), Clay, Collins, Cosby, Crow, Cullins, Curry, Dolbare, Drake, Escott-Russell, Flowers, Ford, Fuller, Gaines, Gaston, Goodwin, Gullatt, Hamilton, Hammett, Harper, Harvey, Hawkins, Haynes, Higginbotham, Hill, Hogan, Holladay, Holley, Holmes, Hooper, Johnson, Kennedy,

Knight, Kvalheim, Laird,
 Layson, Letson, Lindsey,
 Mathis, McClain, McDaniel,
 McDowell, McKee,
 McMillan, Melton, Mikell,
 Millican, Morrow, Morton,
 Newton (C), Newton (D),
 Parker (P), Parker (T),
 Payne, Penry, Perdue,
 Petelos, Poole, Powell, Rich,
 Richardson, Rockhold,
 Rogers (F), Rogers (J),
 Sanderson, Smith (C),
 Smith (R), Spratt, Starkey,
 Thomas, Turner, Turnham,
 Venable, Walker, Warren,
 White, Williams, Willis,
 Zoghby

HOUSE JOINT RESOLUTION

COMMENDING ASTRONAUT JAN DAVIS OF HUNTSVILLE, ALABAMA.

WHEREAS, it is with great personal pride, and on behalf of all citizens of the state, that the Alabama Legislature commends Astronaut Jan Davis of Huntsville, Alabama; and

WHEREAS, Jan Davis and her husband, Astronaut Mark Lee, the first husband and wife team in space, were both aboard the "Endeavor," which landed safely on September 20, 1992, following the successful completion of a cooperative venture between the United States and Japan to conduct experiments in life sciences and materials processing; and

WHEREAS, Jan Davis, an astronaut since 1987, is a graduate of Huntsville High School; she further is the recipient of a bachelor of science degree from Georgia Institute of Technology and also Auburn University, and was awarded both her master of science degree and a doctorate in mechanical engineering from the University of Alabama in Huntsville; and

WHEREAS, Astronaut Jan Davis who, in 1985, was the third woman to receive the Ph.D. degree, and only the second in engineering, in the history of UAH, also was one of only fifteen mission specialists selected in the United States by the National Aeronautics and Space Administration, in June 1987, to fly in space; and

WHEREAS, in recognition of achievement, Dr. Davis has received the Marshall Space Flight Center Director's

Commendation, three NASA Special Service Awards, a NASA Fellowship for Full-Time Study, and the ASME National Old Guard Prize; and

WHEREAS, Astronaut Jan Davis is indeed a distinguished Alabamian whose numerous and notable accomplishments have brought widespread fame and honor to her home state, and her many contributions to our nation's space program are deserving of highest public recognition; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby most highly commend Astronaut Jan Davis of Huntsville, Alabama, and direct that she receive a copy of this resolution of sincere tribute and warmest personal regard.

Approved October 7, 1992

Time: 5:04 P.M.

Act No. 92-696

H.J.R. 82 – Reps. Buskey (JE), Clark (W), Kennedy, Anderson, Barnes, Beasley, Biddle, Black (L), Black (M), Blakeney, Bowling, Box, Bryant, Bugg, Burke, Buskey (JL), Butler, Cagle, Campbell, Carns, Carothers, Carter, Clark (J), Clay, Collins, Coshby, Crow, Cullins, Curry, Dolbare, Drake, Escott-Russell, Flowers, Ford, Freeman, Fuller, Gaines, Gaston, Goodwin, Grayson, Gullatt, Hall, Hamilton, Hammett, Haney, Harper, Harvey, Hawkins, Haynes, Higginbotham, Hill, Hogan, Holladay, Holley, Holmes, Hooper, Johnson, Knight, Kvalheim, Laird, Layson, Letson, Lindsey, Mathis, McClain, McDaniel, McDowell, McKee, McMillan, Melton, Mikell, Millican,

Morrow, Morton, Newton (C),
 Newton (D), Parker (P),
 Parker (T), Payne, Penry,
 Perdue, Petelos, Poole,
 Powell, Rich, Richardson,
 Rockhold, Rogers (F),
 Rogers (J), Sanderford,
 Sanderson, Smith (C),
 Smith (R), Spratt, Starkey,
 Thomas, Turner, Turnham,
 Venable, Walker, Warren,
 White, Williams, Willis,
 Zoghby

HOUSE JOINT RESOLUTION

COMMENDING CAIN JAMES KENNEDY OF MOBILE, ALABAMA.

WHEREAS, it is with highest commendation that the Alabama Legislature congratulates our friend and former colleague, Cain James Kennedy of Mobile, Alabama, on his May 1992 promotion to Captain, JAG Corps, USNR-R; and

WHEREAS, Cain J. Kennedy, who has served since 1979 as Circuit Judge of the 13th Judicial Circuit, Mobile, enlisted in the United States Navy in August 1955 and was honorably discharged in August 1961; he is a member of the Naval Reserve Association, the National Naval Officer Association and the Reserve Association; and

WHEREAS, Judge Kennedy, who is a graduate of California State University with the B.A. degree, received his J.D. (WH) degree from National Law Center at George Washington University; is a graduate also of the National Judicial College and the American Academy of Judicial Education; is a member of the Alabama, District of Columbia, American and National Bar Associations, and the American Association of Trial Lawyers; and was actively engaged in the practice of law from 1971 to 1979; and

WHEREAS, Judge Kennedy, beyond his legislative service as a member of the House of Representatives from 1974 to 1979, during which time he was chair of the Insurance Committee and a member of the Committee on Rules, was also elected to the Alabama State Democratic Executive Committee in 1976 and 1978; was an elected delegate to the 1976 Democratic National Convention; and since his 1979 appointment as Circuit Judge, has been elected to two consecutive six-year terms (1982 and 1988); and

WHEREAS, in addition, however, to his professional duties and responsibilities and those related to the Navy Reserve, Judge

Kennedy has provided leadership to countless civic, fraternal and community organizations, and is an active member of Mount Sinai Baptist Church of Whistler, Alabama; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That in recognition of outstanding achievement and service, and on the occasion of his promotion to the rank of Captain in the United States Navy Reserve, we hereby commend Cain J. Kennedy of Mobile, Alabama, whom we hold in highest personal regard and to whom a copy of this resolution shall be presented.

Approved October 7, 1992

Time: 5:05 P.M.

Act No. 92-697

H.J.R. 72 – Rep. McMillan

HOUSE JOINT RESOLUTION

DESIGNATING THE STOCKTON HORSESHOE TOURNAMENT AS THE OFFICIAL CHAMPIONSHIP HORSESHOE TOURNAMENT FOR THE STATE OF ALABAMA.

WHEREAS, each fall in Stockton, Alabama, there is held a horseshoe tournament; and

WHEREAS, the pitching courts used by the contestants in this tournament comply with the official specifications and requirements of the National Horseshoe Pitchers Association of America; and

WHEREAS, the stakes and horseshoes meet the official standards of the National Horseshoe Pitchers Association; and

WHEREAS, the rules, conduct of players, and scoring of this tournament comply with the requirements of the National Horseshoe Pitchers Association; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That the annual fall horseshoe tournament in Stockton, Alabama, is hereby designated as the official championship horseshoe tournament for the State of Alabama.

Approved October 7, 1992

Time: 5:06 P.M.

Act No. 92-698

H.J.R. 64 – Rep. Biddle

HOUSE JOINT RESOLUTION

EXPRESSING LEGISLATIVE INTENT AS TO ACT 91-657

WHEREAS, it was the intent of the legislature in passing Act 91-657 to give a “distinctive” license plate to any winner of the Purple Heart Medal, and

WHEREAS, the sponsor of the bill displayed the design of the distinctive tag to the other members of the legislature during debate on said act, and

WHEREAS, the State Revenue Department has not begun production of said distinctive plate, and

WHEREAS, the State Revenue Department has indicated they would like to have a clearer indication of legislative intent on this issue,

THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALABAMA, BOTH HOUSES CONCURRING, That it was the intent of the legislature in passing Act 91-657 that winners of the Purple Heart Medal be issued a distinctive license plate emphasizing that the bearer of said license plate has indeed won the Purple Heart Medal.

BE IT FURTHER RESOLVED, That the State Finance Department and the Department of Corrections use the design that has previously been transmitted to them by the Alabama Chapter, Military Order of the Purple Heart.

BE IT FURTHER RESOLVED, That since most of the recipients of the Purple Heart Medal are now senior citizens, the State Finance Department and the Department of Corrections commence production and distribution of the distinctive tag as soon as is conceivably possible.

BE IT FURTHER RESOLVED, That a copy of this resolution be delivered to the State Finance Director and the Director of the Department of Corrections.

Approved October 7, 1992

Time: 5:07 P.M.

Act No. 92-699

H. 26 – Rep. Turner

AN ACT

To make a supplemental appropriation to the Department of Forensic Sciences from the State General Fund in the amount of \$646,000 for the fiscal year ending

September 30, 1993 and provides a supplemental appropriation to the Alabama Homebound Program from the State General Fund in the amount of \$500,000 for the fiscal year ending September 30, 1993.

Be It Enacted by the Legislature of Alabama:

Section 1. In addition to all other appropriations heretofore or hereafter made, there is hereby appropriated from the State General Fund to the Department of Forensic Sciences for the Forensic Science Services Program the sum of Six hundred forty-six thousand dollars (\$646,000) for the fiscal year ending September 30, 1993.

Section 2. In addition to all other appropriations heretofore or hereafter made, there is hereby appropriated from the State General Fund to the Alabama Homebound Program the sum of Five Hundred Thousand dollars (\$500,000) for the fiscal year ending September 30, 1993. Said appropriation shall be used for needed supplies, prescription drugs, and attendant care.

Section 3. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 4. All laws or parts of law which conflict with this Act are hereby specifically repealed

Section 5. This Act shall become effective October 1, 1992.

Approved October 7, 1992

Time: 5:08 P.M.

Act No. 92-700

S. 53 – Senator Windom

AN ACT

To provide for the adoption of Article 2A of the Uniform Commercial Code relating to leases of goods; to amend Section 7-1-105 of the Code of Alabama 1975, relating to the territorial application of the Uniform Commercial Code and the power of parties to contracts to choose the applicable law, so as to include a cross-reference to Article 2A; to amend Section 7-1-201 of the Code of Alabama 1975, so as to revise the definition of "security interest" by modifying the rules for determining whether a transaction is a security interest or a lease; to amend Section 7-9-113 of the Code of Alabama 1975, relating to security interests arising under the article on sales under the Uniform Commercial Code, so as to include reference to security interests arising under the Article 2A; to amend Section 35-4-54 of the Code of Alabama 1975, relating to the recordation of certain conveyances creating estates for life or years in personal property, so as to exclude therefrom all leases including without limitation leases under the Uniform Commercial Code; to amend Section 35-4-94 of the Code of Alabama 1975, relating to the recordation of certain loans in writing, wills and conveyances of estates in personal property, so as to exclude

therefrom all leases including without limitation leases under the Uniform Commercial Code; and to provide for an effective date.

Be It Enacted by the Legislature of Alabama:

ARTICLE 2A. LEASES

PART 1. GENERAL PROVISIONS

Section 101. SHORT TITLE.

This article shall be known and may be cited as the Uniform Commercial Code - Leases.

Section 102. SCOPE.

This article applies to any transaction, regardless of form, that creates a lease, as defined in Section 103(1)(j).

Section 103. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$100,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lease contract or a separate accurate and complete statement delivered to the lessee discloses in writing (a) all express warranties and other rights provided to the lessee by the lessor and the supplier in connection with the lease contract (b) that there are no other express warranties or rights provided to the lessee by the lessor or the supplier in connection with the lease contract, and (c) in a consumer lease, any waiver, disclaimer or other negation of express or implied warranties and any limitation or modification of remedy or liquidation of damages for breach of those warranties or other rights of the lessee in a manner as provided in this article or in Article 2, as applicable; or

(D) the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the supplier, unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier, (b) that the lessee is entitled under ~~this article to all warranties and other rights provided to the lessee by the supplier~~ in connection with the lease contract, and (c) to contact the supplier to receive an accurate and complete statement from the supplier of any such express warranties and other rights and any disclaimers or limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by the court as a matter of law as a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions". Section 310(1).

"Construction mortgage". Section 309(1) (d).

"Encumbrance". Section 309(1) (e).

"Fixtures". Section 309(1) (a).

"Fixture filing". Section 309(1) (b).

"Purchase money lease". Section 309(1) (c).

(3) The following definitions in sections of the Code of Alabama 1975, apply to this article:

"Account". Section 7-9-106.

"Between merchants". Section 7-2-104(3).

"Buyer". Section 7-2-103(1) (a).

"Chattel paper". Section 7-9-105(1) (b).

“Consumer goods”. Section 7-9-109(1).

“Document”. Section 7-9-105(1) (f).

“Entrusting”. Section 7-2-403(3).

“General intangibles”. Section 7-9-106.

“Good faith”. Section 7-2-103(1) (b).

“Instrument”. Section 7-9-105(1) (i).

“Merchant”. Section 7-2-104(1).

“Mortgage”. Section 7-9-105(1) (j).

“Pursuant to commitment”. Section 7-9-105(1) (k).

“Receipt”. Section 7-2-103(1) (c).

“Sale”. Section 7-2-106(1).

“Sale on approval”. Section 7-2-326.

“Sale or return”. Section 7-2-326.

“Seller”. Section 7-2-103(1) (d).

(4) In addition, Section 7-1-201, Code of Alabama 1975, contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 104. LEASES SUBJECT TO OTHER STATUTES.

(1) A lease, although subject to this article, is also subject to any applicable:

(a) certificate of title statute of this state;

(b) certificate of title statute of another jurisdiction (Section 105); or

(c) consumer protection statute of this state.

(2) In case of conflict between this article, other than Sections 105, 304(3), and 305(3), and any statute referred to in subsection (1), the provisions of that statute control.

(3) Failure to comply with any applicable statute has only the effect specified therein.

Section 105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

Subject to the provisions of Sections 304(3) and 305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the

effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Section 106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which

(a) the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter,

(b) the goods are to be used, or

(c) the lease is executed by the lessee, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

Section 107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Section 108. UNCONSCIONABILITY.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) Before making a finding of unconscionability under subsection (1), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

Section 109. OPTION TO ACCELERATE AT WILL.

(1) A term providing that one party or his or her successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he or she deems

himself or herself insecure” or in words of similar import must be construed to mean that he or she has power to do so only if he or she in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

Section 201. STATUTE OF FRAUDS.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party’s authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor’s business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party’s pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

Section 202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 203. SEALS INOPERATIVE.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Section 204. FORMATION IN GENERAL.

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 205. FIRM OFFERS.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the

time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 207. COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.

(1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of Section 208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Section 208. MODIFICATION, RESCISSION AND WAIVER.

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (Section 201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.

(1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (Section 209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

Section 210. EXPRESS WARRANTIES.

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

Section 211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

Section 212. IMPLIED WARRANTY OF MERCHANTABILITY.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) other implied warranties may arise from course of dealing or usage of trade.

Section 213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

Section 214. EXCLUSION OR MODIFICATION OF WARRANTIES.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3):

(a) to exclude or modify the implied warranty of "merchantability," or any part of it the language must mention merchantability, be by a writing, and be conspicuous. Language to exclude the implied warranty of merchantability is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be merchantable."

(b) to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2), but subject to subsection (4),

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all

faults,” or by other language that in common understanding calls the lessee’s attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (Section 211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

(5) Nothing in subsection (2) or subsection (3)(a) or in Section 215 shall be construed so as to limit or expand the lessor’s liability for damages for injury to the person in the case of consumer goods.

Section 215. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.

(1) A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who may reasonably be expected to use, consume, or be affected by the goods and who is injured in person by breach of the warranty.

(2) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons.

(3) The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any person referred to in subsections (1) and (2) of this section.

Section 217. IDENTIFICATION.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

Section 218. INSURANCE AND PROCEEDS.

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until the lessor's default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss **has passed to the lessee. For this purpose the option to buy shall be deemed to have been exercised by the lessee when the resulting sale is closed, not when the lessee gives notice to the lessor of the lessee's intention to exercise the option.**

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

Section 219. RISK OF LOSS.

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this article on the effect of default on risk of loss (Section 220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Section 220. EFFECT OF DEFAULT ON RISK OF LOSS.

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Section 221. CASUALTY TO IDENTIFIED GOODS.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the

lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section 219, then:

(a) if the loss is total, the lease contract is voided; and

(b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as voided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3. EFFECT OF LEASE CONTRACT

Section 301. ENFORCEABILITY OF LEASE CONTRACT.

Except as otherwise provided in this article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

Section 302. TITLE TO AND POSSESSION OF GOODS.

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Section 303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE: TRANSFER OF RIGHTS.

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, Code of Alabama 1975, by reason of Section 7-9-102(1) (b) of Article 9.

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) (a) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of “the lease” or of “all my rights under the lease”, or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Section 304. SUBSEQUENT LEASE OF GOODS BY LESSOR.

(1) Subject to Section 303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and Section 527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor’s transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a “cash sale”; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor’s and the existing lessee’s rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 305. SALE OR SUBLEASE OF GOODS BY LESSEE.

(1) Subject to the provisions of Section 303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and Section 511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (a) the lessor was deceived as to the identity of the lessee;
- (b) the delivery was in exchange for a check which is later dishonored; or
- (c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this act unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Section 307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON; SECURITY INTERESTS IN AND OTHER CLAIMS TO GOODS.

(1) Except as otherwise provided in Section 306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in Sections 306 and 308, a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods which was perfected (Section 7-9-303, Code of Alabama 1975) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (Section 7-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 308. SPECIAL RIGHTS OF CREDITORS.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this article impairs the rights of creditors of a lessor if the lease contract is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention

of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Section 309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Section 7-9-402(5), Code of Alabama 1975;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation

of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Uniform Commercial Code on Secured Transactions (Article 9, Title 7, Code of Alabama 1975).

Section 310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS.

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or (b) if necessary to enforce his or her other rights and remedies under this article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 311. PRIORITY SUBJECT TO SUBORDINATION.

Nothing in this article prevents subordination by agreement by any person entitled to priority.

PART 4. PERFORMANCE OF LEASE CONTRACT:

REPUDIATED, SUBSTITUTED AND EXCUSED

Section 401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of the demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Section 402. ANTICIPATORY REPUDIATION.

(1) If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) make demand pursuant to Section 401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.

(2) In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 524).

Section 403. RETRACTION OF ANTICIPATORY REPUDIATION.

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 404. SUBSTITUTED PERFORMANCE.

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Section 405. EXCUSED PERFORMANCE.

Subject to Section 404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee.

Section 406. PROCEDURE ON EXCUSED PERFORMANCE.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 510):

(a) terminate the lease contract (Section 505(2)); or (b) except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent

payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under Section 405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

Section 407. IRREVOCABLE PROMISES: FINANCE LEASES.

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

PART 5. DEFAULT

A. IN GENERAL

Section 501. DEFAULT: PROCEDURE.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in Section 7-1-106(1), Code of Alabama 1975, or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

Section 502. NOTICE AFTER DEFAULT.

(1) Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Section 503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.

(1) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under Section 504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is *prima facie* unconscionable but limitation, alteration, or exclusion of damages where the loss is **commercial is not *prima facie* unconscionable.**

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article.

(5) Nothing in this section or in Section 504 shall be construed so as to limit or expand the lessor's liability for damages for injury to the person in the case of consumer goods.

Section 504. LIQUIDATION OF DAMAGES.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 525 or 526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this article other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Section 505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.

(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Section 506. STATUTE OF LIMITATIONS.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues (a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, or when the default occurs, whichever is later, (b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof. A cause of action for damages for injury to the person in the case of consumer goods accrues when the injury occurs.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations ~~nor does it apply to causes of action that have~~ accrued before this article becomes effective.

Section 507. PROOF OF MARKET RENT: TIME AND PLACE.

(1) Damages based on market rent (Section 519 or 528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 519 and 528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment

or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

B. DEFAULT BY LESSOR

Section 508. LESSEE'S REMEDIES.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 509) or repudiates the lease contract (Section 402), or a lessee rightfully rejects the goods (Section 509) or justifiably revokes acceptance of the goods (Section 517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 510), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract (Section 505(1));

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 518 and 520), or recover damages for nondelivery (Sections 519 and 520);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (Section 522); or

(b) in a proper case, obtain specific performance or replevy the goods (Section 521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in Section 519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages [Section 519(4)].

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to Section 527(5).

(6) Subject to the provisions of Section 407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Section 509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION.

(1) Subject to the provisions of Section 510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

Section 510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT.

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming

delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Section 511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

(1) Subject to any security interest of a lessee [Section 508(5)], if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee [subsection (1)] or any other lessee (Section 512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or Section 512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this article.

Section 512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 511) and subject to any security interest of a lessee [Section 508(5)]:

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's

or the supplier's account with reimbursement in the manner provided in Section 511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

Section 513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.

(1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.

Section 514. WAIVER OF LESSEE'S OBJECTIONS.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

Section 515. ACCEPTANCE OF GOODS.

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods [Section 509(2)].

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the

claim is one for infringement or the like (Section 211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 211).

(6) Subsection (3) shall not apply to a consumer lease.

Section 517. REVOCATION OF ACCEPTANCE OF GOODS.

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Section 518. COVER; SUBSTITUTE GOODS.

(1) After a default by a lessor under the lease contract of the type described in Section 508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 504) or otherwise determined pursuant to agreement of the parties [Section 7-1-102(3), Code of Alabama 1975, and Section 503], if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 519 governs.

Section 519. LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 504) or otherwise determined pursuant to agreement of the parties [Section 7-1-102(3), Code of Alabama 1975, and Section 503], if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification [Section 516(3)], the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from

the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.

(1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

Section 521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Section 522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

C. DEFAULT BY LESSEE

Section 523. LESSOR'S REMEDIES.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 510), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract [Section 505(1)];

(b) proceed respecting goods not identified to the lease contract (Section 524);

(c) withhold delivery of the goods and take possession of goods previously delivered (Section 525);

(d) stop delivery of the goods by any bailee (Section 526);

(e) dispose of the goods and recover damages (Section 527), or retain the goods and recover damages (Section 528), or in a proper case recover rent (Section 529);

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract which may include a right to cancel the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

Section 524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.

(1) A lessor aggrieved under Section 523(1) may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods [Section 527(1)] that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Section 525. LESSOR'S RIGHT TO POSSESSION OF GOODS.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in Section 523(1) or 523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may ~~require the lessee to assemble the goods and make them available~~ to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

Section 526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent,

security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.

(1) After a default by a lessee under the lease contract of the type described in Section 523(1) or 523(3)(a) or after the lessor refuses to deliver or takes possession of goods (Section 525 or 526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 504) or otherwise determined pursuant to agreement of the parties [Section 7-1-102(3), Code of Alabama 1975, and Section 503], if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest [Section 508(5)].

Section 528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 504) or otherwise determined pursuant to agreement of the parties [Section 7-1-102(3), Code of Alabama 1975, and Section 503], if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 523(1) or 523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Section 529. LESSOR'S ACTION FOR THE RENT.

(1) After default by the lessee under the lease contract of the type described in Section 523(1) or 523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 527 or Section 528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 527 or 528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 527 and 528.

Section 530. LESSOR'S INCIDENTAL DAMAGES.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

Section 531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract

(a) the lessor has a right of action against the third party, and

(b) the lessee also has a right of action against the third party if the lessee: (i) has a security interest in the goods; (ii) has an insurable interest in the goods; or (iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

Section 532. LESSOR'S RIGHTS TO RESIDUAL INTEREST.

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

PART 6. LAWS AMENDED

Section 601. AMENDMENT

Section 7-1-105, Code of Alabama 1975, is hereby amended to read as follows:

"§7-1-105. Territorial application of title: parties' power to choose applicable law.

"(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

“(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

“Rights of creditors against sold goods. Section 7-2-402.

“Applicability of the article on leases. Sections 105 and 106.

“Applicability of the article on bank deposits and collections. Section 7-4-102.

“Bulk transfers subject to the article on bulk transfers. Section 7-6-102.

“Applicability of the article on investment securities. Section 7-8-106.

“Perfection provisions of the article on secured transactions. Section 7-9-103.”

Section 602. AMENDMENT

Section 7-1-201, Code of Alabama 1975, is hereby amended to read as follows:

“§7-1-201. General definitions.

“Subject to additional definitions contained in the subsequent articles of this title which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this title:

“(1) ‘Action’ in the sense of a judicial proceeding includes civil action, counterclaim, cross-claim, third party complaint and any other proceedings in which rights are determined.

“(2) ‘Aggrieved party’ means a party entitled to resort to a remedy.

“(3) ‘Agreement’ means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 7-1-205 and 7-2-208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 7-1-103). (Compare ‘contract.’)

“(4) ‘Bank’ means any person engaged in the business of banking.

“(5) ‘Bearer’ means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

“(6) ‘Bill of lading’ means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an air bill. ‘Air bill’ means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

“(7) ‘Branch’ includes a separately incorporated foreign branch of a bank.

“(8) ‘Burden of establishing’ a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

“(9) ‘Buyer in ordinary course of business’ means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or mine shall be deemed to be persons in the business of selling goods of that kind. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“(10) ‘Conspicuous’: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: **NONNEGOTIABLE BILL OF LADING**) is conspicuous. Language in the body of a form is ‘conspicuous’ if it is in larger or other contrasting type or color. But in a telegram any stated term is ‘conspicuous.’ Whether a term or clause is ‘conspicuous’ or not is for decision by the court.

“(11) ‘Contract’ means the total legal obligation which results from the parties’ agreement as affected by this title and any other applicable rules of law. (Compare “agreement.”)

“(12) ‘Creditor’ includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor’s or assignor’s estate.

“(13) ‘Defendant’ includes a person in the position of defendant in a cross-action or counterclaim.

“(14) ‘Delivery’ with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

“(15) ‘Document of title’ includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

“(16) ‘Fault’ means wrongful act, omission or breach.

“(17) ‘Fungible’ with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

“(18) ‘Genuine’ means free of forgery or counterfeiting.

“(19) ‘Good faith’ means honesty in fact in the conduct or transaction concerned.

“(20) ‘Holder’ means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or her or to his or her order or to bearer or in blank.

“(21) To ‘honor’ is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

“(22) ‘Insolvency proceedings’ includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

“(23) A person is ‘insolvent’ who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

“(24) ‘Money’ means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

“(25) A person has ‘notice’ of a fact when:

“(a) He or she has actual knowledge of it; or

“(b) He or she has received a notice or notification of it; or

“(c) From all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person 'knows' or has 'knowledge' of a fact when he or she has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

"(26) A person 'notifies' or 'gives' a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person 'receives' a notice or notification when:

"(a) It comes to his or her attention; or

"(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

"(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

"(28) 'Organization' includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"(29) 'Party,' as distinct from 'third party,' means a person who has engaged in a transaction or made an agreement within this title.

"(30) 'Person' includes an individual or an organization (see section 7-1-102).

"(31) 'Presumption' or 'presumed' means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

"(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

“(33) ‘Purchaser’ means a person who takes by purchase.

“(34) ‘Remedy’ means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

“(35) ‘Representative’ includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

“(36) ‘Rights’ includes remedies.

“(37) ‘Security interest’ means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 7-2-401) is limited in effect to a reservation of a ‘security interest’. The term also includes any interest of a buyer of accounts or chattel paper which is subject to article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 7-2-401 is not a ‘security interest,’ but a buyer may also acquire a ‘security interest’ by complying with article 9. Unless a consignment is intended as security, reservation of title thereunder is not a ‘security interest,’ but a consignment in any event is subject to the provisions on consignment sales (section 7-2-326).

“Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

“(a) the original term of the lease is equal to or greater than the remaining economic life of the goods, or

“(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

“(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

“(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

“A transaction does not create a security interest merely because it provides that:

“(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the

goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

“(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

“(c) the lessee has an option to renew the lease or to become the owner of the goods,

“(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

“(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

“For purposes of this subsection (37):

“(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;

“(b) ‘Reasonably predictable’ and ‘remaining economic life of the goods’ are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

“(c) ‘Present value’ means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by the court as a matter of law by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

“(38) ‘Send’ in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The

receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

“(39) ‘Signed’ includes any symbol executed or adopted by a party with present intention to authenticate a writing.

“(40) ‘Surety’ includes guarantor.

“(41) ‘Telegram’ includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

“(42) ‘Term’ means that portion of an agreement which relates to a particular matter.

“(43) ‘Unauthorized’ signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

“(44) ‘Value’. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 7-3-303, 7-4-208 and 7-4-209) a person gives ‘value’ for rights if he or she acquires them:

“(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

“(b) As security for or in total or partial satisfaction of a preexisting claim; or

“(c) By accepting delivery pursuant to a preexisting contract for purchase; or

“(d) Generally, in return for any consideration sufficient to support a simple contract.

“(45) ‘Warehouse receipt’ means a receipt issued by a person engaged in the business of storing goods for hire.

“(46) ‘Written’ or ‘writing’ includes printing, typewriting or any other intentional reduction to tangible form.”

Section 603. AMENDMENT.

Section 7-9-113, Code of Alabama 1975, is hereby amended to read as follows:

“§7-9-113. Security interests arising under the article on sales or under the article on leases.

“A security interest arising solely under the article on sales (article 2) or the article on leases (article 2A) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

“(a) No security agreement is necessary to make the security interest enforceable; and

“(b) No filing is required to perfect the security interest; and

“(c) The rights of the secured party on default by the debtor are governed (i) by the article on sales (article 2) in the case of a security interest arising solely under such article or (ii) by the article on leases in the case of a security interest arising solely under that article.”

Section 604. AMENDMENT.

Section 35-4-54, Code of Alabama 1975, is hereby amended to read as follows:

“§35-4-54. Conveyances of personal property brought into state by tenants for life or years.

“Whenever any person, having an estate for life or years in personal property removes to this state with such property, the conveyance creating such estate must be recorded in the county to which it was brought within 12 months thereafter; and, if such property is removed to another county, then in such county within four months after its removal thereto, or such property must be taken to vest absolutely in such person, as to purchasers and creditors without notice; provided, however, that nothing contained in this section shall be construed as applying to any leases, including, without limitation, leases under the Uniform Commercial Code.”

Section 605. AMENDMENT.

Section 35-4-94, Code of Alabama 1975, is hereby amended to read as follows:

“§35-4-94. Loans in writing, wills or conveyances creating estates in personal property on condition, etc.

“All loans in writing, wills or conveyances creating estates in personal property, on condition, in reversion or remainder, or in which the use is separated from the right, other than the conveyances hereinabove in this division specified and other than leases (including, without limitation, leases under the Uniform Commercial Code) and security agreements under the Uniform Commercial Code, and under which possession is suffered to remain for three years with the party entitled to the estate or use, vest an absolute estate in the person so having possession for such number of years as to creditors and purchaser of such person unless such loan, will or conveyance is recorded within such time in the county where such property is; provided, however, that nothing contained in this section shall be construed as applying to any lease, (including, without limitation, leases under the Uniform

Commercial Code) or to any security interest or security agreement under the Uniform Commercial Code.”

PART 7. UNIFORMITY, SEVERABILITY, AND EFFECTIVE DATE

Section 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This act shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 702. SEVERABILITY.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

Section 703. EFFECTIVE DATE.

This act shall take effect on the first January 1 following the date of its passage and approval by the Governor, or its otherwise becoming a law.

Approved October 7, 1992

Time: 5:09 P.M.

Act No. 92-701

S. 54 – Senator Windom

AN ACT

To provide for the adoption of Article 4A of the Uniform Commercial Code relating to funds transfers and to amend Section 7-1-105, Code of Alabama 1975, to provide for territorial application of the governing law under Article 4A; and to provide for an effective date.

Be It Enacted by the Legislature of Alabama:

Section 1. Article 4A of the Uniform Commercial Code is added to Title 7 of the Code of Alabama 1975, to read as follows:

ARTICLE 4A

FUNDS TRANSFERS

PART 1

SUBJECT MATTER AND DEFINITIONS

§ 7-4A-101. SHORT TITLE.

This article shall be known as and may be cited as the Uniform Commercial Code - Funds Transfers.

§ 7-4A-102. SUBJECT MATTER.

Except as otherwise provided in Section 7-4A-108, this article applies to funds transfers defined in Section 7-4A-104.

§ 7-4A-103. PAYMENT ORDER — DEFINITIONS.

(a) In this article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

§ 7-4A-104. FUNDS TRANSFER — DEFINITIONS.

In this article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes

any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

§ 7-4A-105. OTHER DEFINITIONS.

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing-house, or other communication system of a clearing-house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact [Section 7-1-201(8), Code of Alabama 1975].

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance"	Section 7-4A-209
"Beneficiary"	Section 7-4A-103
"Beneficiary's bank"	Section 7-4A-103
"Executed"	Section 7-4A-301
"Execution date"	Section 7-4A-301
"Funds transfer"	Section 7-4A-104
"Funds-transfer system rule"	Section 7-4A-501
"Intermediary bank"	Section 7-4A-104
"Originator"	Section 7-4A-104
"Originator's bank"	Section 7-4A-104
"Payment by beneficiary's bank to beneficiary"	Section 7-4A-405
"Payment by originator to beneficiary"	Section 7-4A-406
"Payment by sender to receiving bank"	Section 7-4A-403
"Payment date"	Section 7-4A-401
"Payment order"	Section 7-4A-103
"Receiving bank"	Section 7-4A-103
"Security procedure"	Section 7-4A-201
"Sender"	Section 7-4A-103

(c) The following definitions in Article 4 of Title 7, Code of Alabama 1975, apply to this article:

"Clearing-house"	Section 7-4-104
"Item"	Section 7-4-104
"Suspends payments"	Section 7-4-104

(d) In addition, Article 1 (commencing with Section 7-1-101) of Title 7, Code of Alabama 1975, contains general definitions and principles of construction and interpretation applicable throughout this article.

§ 7-4A-106. TIME PAYMENT ORDER IS RECEIVED.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 7-1-201(27), Code of Alabama 1975. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending

payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

§ 7-4A-107. FEDERAL RESERVE REGULATIONS AND OPERATING CIRCULARS.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this article to the extent of the inconsistency.

§ 7-4A-108. EXCLUSION OF CONSUMER TRANSACTIONS GOVERNED BY FEDERAL LAW.

This article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

§ 7-4A-201. SECURITY PROCEDURE.

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

§ 7-4A-202. AUTHORIZED AND VERIFIED PAYMENT ORDERS.

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure **that was commercially reasonable for that customer**, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 7-4A-203(a)(1), rights and obligations arising under this section or Section 7-4A-203 may not be varied by agreement.

§ 7-4A-203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT ORDERS.

(a) If an accepted payment order is not, under Section 7-4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 7-4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

§ 7-4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 7-4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 7-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 7-1-204(1), Code of Alabama 1975,

but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

§ 7-4A-205. ERRONEOUS PAYMENT ORDERS.

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 7-4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

§ 7-4A-206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-TRANSFER OR OTHER COMMUNICATION SYSTEM.

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

§ 7-4A-207. MISDESCRIPTION OF BENEFICIARY.

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

§ 7-4A-208. MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S BANK.

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number

refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 7-4A-302(a)(1).

§ 7-4A-209. ACCEPTANCE OF PAYMENT ORDER.

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 7-4A-405(a) or 7-4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 7-4A-403(a)(1) or 7-4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the

amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 7-4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

§ 7-4A-210. REJECTION OF PAYMENT ORDER.

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 7-4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

§ 7-4A-211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER.

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

§ 7-4A-212. LIABILITY AND DUTY OF RECEIVING BANK REGARDING UNACCEPTED PAYMENT ORDER.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for

breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 7-4A-209, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement.

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

§ 7-4A-301. EXECUTION AND EXECUTION DATE.

(a) A payment order is “executed” by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary’s bank can be accepted but cannot be executed.

(b) “Execution date” of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender’s order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender’s instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

§ 7-4A-302. OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF PAYMENT ORDER.

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 7-4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender’s order and to follow the sender’s instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator’s bank issues a payment order to an intermediary bank, the originator’s bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer

is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

§ 7-4A-303. ERRONEOUS EXECUTION OF PAYMENT ORDER.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in

execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 7-4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 7-4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

§ 7-4A-304. DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED PAYMENT ORDER.

If the sender of a payment order that is erroneously executed as stated in Section 7-4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 7-4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

§ 7-4A-305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE TO EXECUTE PAYMENT ORDER.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 7-4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 7-4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

PART 4

PAYMENT

§ 7-4A-401. PAYMENT DATE.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction

of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

§ 7-4A-402. OBLIGATION OF SENDER TO PAY RECEIVING BANK.

(a) This section is subject to Sections 7-4A-205 and 7-4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 7-4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 7-4A-204 and 7-4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 7-4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

§ 7-4A-403. PAYMENT BY SENDER TO RECEIVING BANK.

(a) Payment of the sender's obligation under Section 7-4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 7-4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 7-4A-402(b) or 7-4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

§ 7-4A-404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE NOTICE TO BENEFICIARY.

(a) Subject to Sections 7-4A-211(e), 7-4A-405(d), and 7-4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonably in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

§ 7-4A-405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 7-4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the

bank's obligation under Section 7-4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 7-4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under Section 7-4A-406, and (iv) subject to Section 7-4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 7-4A-402(c) because the funds transfer has not been completed.

§ 7-4A-406. PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF UNDERLYING OBLIGATION.

(a) Subject to Sections 7-4A-211(e), 7-4A-405(d), and 7-4A-405(e), the originator of a funds transfer pays the beneficiary of

the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 7-4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

PART 5

MISCELLANEOUS PROVISIONS

§ 7-4A-501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS-TRANSFER SYSTEM RULE.

(a) Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the

rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 7-4A-404(c), 7-4A-405(d), and 7-4A-507(c).

§ 7-4A-502. CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF BY BENEFICIARY'S BANK.

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served

only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

§ 7-4A-503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO FUNDS TRANSFER.

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

§ 7-4A-504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT.

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

§ 7-4A-505. PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

§ 7-4A-506. RATE OF INTEREST.

(a) If, under this article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated

by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

§ 7-4A-507. CHOICE OF LAW.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued

or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

PART 6

UNIFORMITY

§ 7-4A-601. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Section 2. AMENDMENT.

Section 7-1-105, Code of Alabama 1975, is amended to read as follows:

“§7-1-105. Territorial application of title; parties’ power to choose applicable law.

“(1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state.

“(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

“Rights of creditors against sold goods. Section 7-2-402.

“Applicability of the article on bank deposits and collections. Section 7-4-102.

“Governing law in the article on funds transfers. Section 7-4A-507.

“Bulk transfers subject to the article on bulk transfers. Section 7-6-102.

“Applicability of the article on investment securities. Section 7-8-106.

“Perfection provisions of the article on secured transactions. Section 7-9-103.”

Section 3. SEVERABILITY.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

Section 4. EFFECTIVE DATE.

This act shall take effect on the first January 1 following the date of its passage and approval by the Governor, or its otherwise becoming a law.

Approved October 7, 1992

Time: 5:10 P.M.

Act No. 92-702

S. 80 – Senator Dial

AN ACT

To amend Section 9-11-417 of the Code of Alabama 1975, relating to hunting licenses on a commercial fowl hunting preserve to provide a seven-day commercial fowl hunting preserve hunting license.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 9-11-417 of the Code of Alabama 1975, is amended to read as follows:

“§9-11-417.

“(a) Alabama hunting licenses shall be required of all persons hunting on licensed hunting preserves. Alabama residents shall be licensed under the regularly established game laws. Each non-resident hunting on a licensed preserve shall be required to possess a regular non-resident annual hunting license or a non-resident trip hunting license.

“(b) In lieu of a regular hunting license as provided in subsection (a) of this section, either a resident or a non-resident may purchase a seven-day commercial fowl hunting preserve license that allows that person the privilege of hunting only artificially propagated or pen-raised fowl as designated by the Commissioner of Conservation and Natural Resources as legal to hunt on a licensed commercial fowl hunting preserve. The cost of a seven-day commercial fowl hunting preserve license shall be eight dollars (\$8), plus a two dollar (\$2) issuance fee. The license shall be valid for seven consecutive days from the date of issuance.

“(c) To better serve the public and in order that the state will not lose revenue from the loss of sale of licenses to out-of-state visitors arriving on weekends, each hunting preserve operator licensed pursuant to this article shall be an agent vendor of all non-resident and resident hunting licenses with any issuance fees collected therefor to be remitted to the judge of probate of the county in which the preserve is located.”

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:11 P.M.

Act No. 92-703

S. 34 – Senators deGraffenried, Foshee, Dial, Horn, Corbett, Owens, Denton, Dixon, Waggoner, Smith (J), Lindsey and Little

AN ACT

To amend Section 40-17-1, Code of Alabama 1975, relating to the definition of “motor fuel”; to amend Section 40-17-11, Code of Alabama 1975, as amended by Act No. 92-543 enacted at the 1992 Regular Session of the Legislature of Alabama, relating to the recordkeeping requirements and corresponding liability for tax on the sale and use of motor fuels; and to impose penalties for using the use of motor fuel on the highways on which the tax has not been paid.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 40-17-1, Code of Alabama 1975, is amended to read as follows:

“§40-17-1.

“As used in this article, the term “motor fuel” shall include diesel fuel, tractor fuel, gas oil, distillate, kerosene, jet fuel, or any

substitutes or devices therefor when sold, distributed, stored, or withdrawn from storage in this state for use in the operation of any motor vehicle upon the highways of this state.”

Section 2. Section 40-17-11, Code of Alabama 1975, as amended by Act No. 92-543 enacted at the 1992 Regular Session of the Legislature of Alabama, is amended to read as follows:

“§40-17-11.

In the administration of this article the department of revenue shall permit the sale or use of motor fuels without liability on the part of the distributor or storer for the tax herein levied except:

(1) Where the distributor or storer delivers motor fuel into the fuel supply tank of a motor vehicle for the propulsion thereof on the public highways of this state.

(2) Where the distributor or storer delivers motor fuel into dispensing equipment of a retail dealer designed and used to supply motor fuel into the fuel supply tank of a motor vehicle for the propulsion thereof on the public highways for this state.

(3) Where the distributor or storer sells or distributes motor fuel, knowing or having good reason to know that the motor fuel is to be used for propelling motor vehicles on the public highways of this state.

It is the intent of this article that the tax shall be imposed only where motor fuels are used in the operation of motor vehicles on highways of this state. Notwithstanding the foregoing, any person purchasing or acquiring motor fuel from a licensed distributor for the operation of a motor vehicle upon the highways of this state without advising the distributor of his or her intention to use the motor fuel for that purpose or obtaining motor fuel from any source and using it for that purpose, shall also be defined as a distributor and shall be liable for the excise tax levied by section 40-17-2, plus a 100 percent penalty. In addition, the person shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50.00 nor more than \$1,000.00. There shall be no tax liability when sales of motor fuels are made to a user, distributor, or storer who has obtained a license from the commissioner of revenue, as provided in section 40-17-14, and assumes full liability for the tax.

(4) In connection with the delivery of diesel fuel for purposes other than those described in paragraphs (1), (2), and (3) above, or otherwise exempt from the imposition of the tax levied pursuant to this Article, if the distributor or storer has maintained adequate records as required by law to document the sale or storage of diesel fuel with respect to sales of diesel fuel made tax exempt versus tax

paid, the distributor or storer shall be relieved from the responsibility of any obligation to pay tax under this Article and the burden shall be on the end user and not the distributor or storer to establish by satisfactory evidence the purpose for which the purchaser used the diesel fuel purchased if there shall be filed with the distributor or storer by the person purchasing or acquiring diesel fuel from the distributor or storer the exemption certificate required to be kept for federal excise tax purposes for diesel fuel sold tax exempt for off road purposes.

The distributor or storer shall furnish a copy of the certificate to the purchaser and shall retain the original thereof for examination by the Department of Revenue for a period of not less than three years. Each purchaser of diesel fuel for off road use shall maintain such of those records required for federal excise tax purposes for diesel fuel purchased for off road use as are described in the last sentence of this section in order to establish the use of the fuel in motor vehicles operated other than on the public highways of the state. Such records shall be kept and made available for examination by the Department of Revenue for a period of not less than three years. The Department of Revenue may require purchasers of diesel fuel for off road use to maintain only the following of the records required for federal excise tax purposes to be kept by purchasers of motor fuel on a federal tax exempt basis in order to establish the off road use of motor fuel purchased on a state tax exempt basis: (1) receipts for all purchases of diesel fuel (showing payment, if any, of tax with respect thereto), (2) diesel fuel tank capacities for all vehicles used by the purchaser off the public roads of this state and capacity of storage tanks for diesel fuel tanks and (3) mileage records of the on-road use of all such vehicles that are equipped with odometers.”

Section 3. It shall be unlawful for any person to sell for use or to use motor fuel in the operation of a motor vehicle over the highways of this state, upon which the tax levied by chapter 17 of Title 40, Code of Alabama 1975, has not been paid or the payment thereof assumed by a distributor, storer, or user licensed by the Department of Revenue. Any person who willfully fails to comply with the provisions of said chapter shall for each failure be subject to a penalty imposed by the Department of Revenue of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000).

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:12 P.M.

Act No. 92-704

S. 66 – Senator Floyd

AN ACT

To establish certain due process rights for persons under investigation by the Department of Human Resources for alleged child abuse and/or neglect; and to amend Section 26-14-8, Code of Alabama, 1975, as amended, relating to the statewide central registry for reports of child abuse and neglect so as to further provide for the release of such information and the removal of names from the central registry.

Be It Enacted by the Legislature of Alabama:

Section 1. Any person who comes under investigation by the Department of Human Resources for the abuse or neglect of a child or children and who is employed by, serves as a volunteer for, holds a license or certificate for, or is connected with any facility, agency, or home which cares for and controls any children and which is licensed, approved, or certified by the state, operated as a state facility, or any public, private, or religious facility or agency that may be exempt from licensing procedures shall be granted the following due process rights by the Department of Human Resources:

(a) The Department shall notify the alleged perpetrator that an investigation has commenced against him after such investigation has officially begun in accordance with written policies established by the Department of Human Resources. The notice shall be in writing and shall state the name of the child or children allegedly abused, the date or dates that the alleged abuse is thought to have occurred, and the substance of the person's actions which are alleged to be abusive. The Department shall establish and maintain written policies outlining the specifics of such notification and other policies deemed necessary and prudent by the Department to inform the alleged perpetrator of his rights and the procedures utilized by the Department involving child abuse and neglect investigations.

(b) If the Department conducts an investigation relating to child abuse/neglect, the alleged perpetrator shall be notified of the investigator's conclusions.

(c) If the Department's investigators conclude that child abuse/neglect is indicated, an investigative hearing may be held to confirm or reject the investigators conclusions.

(d) The alleged perpetrator shall be given ten departmental working days from the receipt of the notification of the investigator's conclusions to request a hearing, and such request must be in writing. If no such request is received in the Department's office within ten departmental working days, the alleged perpetrator's

opportunity for a hearing shall be considered waived by the Department.

(e) The employer of an alleged perpetrator shall not be notified of the investigator's conclusions prior to a hearing or its waiver unless, in the opinion of the Department's investigators, a child is in danger of abuse or neglect; in such case, any person in a position to discover, prevent or protect the child from his abuse or neglect may be informed of information gathered in the investigation prior to a requested investigative hearing for the alleged perpetrator.

(f) The alleged perpetrator shall be notified of the date, time, and place of any investigative hearing. Such hearing shall not be open to the public.

(g) The alleged perpetrator shall have the following rights at any Departmental investigative hearing:

(1) The right to present his case himself or be represented by legal counsel or any other person.

(2) The right to present written evidence, oral testimony, and witnesses.

(3) The right to be provided by the Department a short and plain written statement of the matters asserted which will be presented at the hearing.

(4) The right to review and copy at cost any written or recorded statement made by the alleged perpetrator to departmental personnel in the course of the child abuse/neglect investigation. This request must be made prior to the date for the hearing.

(5) The right to review and copy at cost, before or during the hearing, the written material and other evidence in possession of the Department which will be placed into evidence at the hearing.

(6) The right to inspect any exculpatory evidence which may be in the possession of departmental investigators, and the right to be informed of such evidence if known by departmental investigators before the hearing; provided, that a request for such evidence is made at least five working days prior to the date set for the hearing.

(7) The right to review and copy at cost all non-confidential Department documents pertinent to the case, including written policies and rights.

(8) The right to cross-examine witnesses testifying at the hearing.

(9) The right to request issuance of subpoenas to witnesses and compel attendance. This request must be received no later than ten calendar days prior to the hearing, unless a shorter time is agreed upon by the hearing officer.

(10) The right to review and copy at cost all documents in the official hearing file maintained by the hearing officer.

(11) The right to have a hearing officer appointed who shall be disinterested, fair, and impartial.

(h) The Department of Human Resources or its investigative hearing officers shall have the power and authority to issue subpoenas to compel attendance by and production of documents from any witness. Subpoenas may be served in the same manner as subpoenas issued out of any circuit court. Where any witness has been summoned by the Department of Human Resources, its Commissioner or any of his agents, and said witness refuses to appear, testify, or produce records or documents as requested; then any circuit court in this state, or any judge thereof, on application, may issue an attachment for such person and compel him to comply with such order and the court or judge shall have power to punish for contempt in cases of disobedience of such order.

(i) The Department of Human Resources shall establish policies and written guidelines for the conduct and procedures involved in an investigative hearing. At such hearing, the fact that there was a finding by a juvenile court judge or by a criminal court that child abuse or neglect has occurred shall be presumptive evidence that the report should be marked indicated.

(j) The hearing officer shall notify the alleged perpetrator in writing of the hearing officer's decision.

(k) Results of investigative hearings:

(1) If the hearing officer concludes that child abuse and/or neglect is "indicated," such findings and evidence shall be filed with the appropriate district attorney and other law enforcement officials which the Department may deem necessary.

(2) The alleged perpetrator's employer or licensing/certifying agency or group may also be notified of the "indicated" findings. Such notification shall be marked "Confidential" and "To Be Used Only For The Purpose Of Discovery Or Preventing Child Abuse." The Department shall establish written policies for notification of employers, prospective employers and licensing/certifying agencies or groups.

Section 2. Section 26-14-8, Code of Alabama, 1975, is hereby amended to read as follows:

“(a) For the purposes of this section, the following words shall have the following meanings, respectively:

“(1) Indicated. When credible evidence and professional judgment substantiates that an alleged perpetrator is responsible for child abuse or neglect.

“(2) Not indicated. When credible evidence and professional judgment does not substantiate that an alleged perpetrator is responsible for child abuse or neglect.

“(b) The state department of human resources shall establish a statewide central registry for reports of child abuse and neglect made pursuant to this chapter. The central registry shall contain, but shall not be limited to:

“(1) All information in the written report;

“(2) Record of the final disposition of the report, including services offered and services accepted;

“(3) The names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry;

“(4) The plan for rehabilitative treatment; and

“(5) Any other information which might be helpful in furthering the purposes of this chapter.

“(c) The state department of human resources shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the reports and records of child abuse and neglect. The use of such reports and records shall be limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished. The reports and records of child abuse and neglect shall be confidential, and shall not be used or disclosed for any purposes other than:

“(1) To permit their use to prevent or to discover abuse or neglect of children through the information contained therein; or

“(2) For investigation of child abuse or neglect by the police or other law enforcement agency; or

“(3) For use by a grand jury upon its determination that access to such reports and records is necessary in the conduct of its official business; or

“(4) For use by a court where it finds that such information is necessary for the determination of an issue before the court; or

“(5) For use by any person engaged in bona fide research who is authorized to have access to such information by the commissioner of the state department of human resources; or

“(6) For use by any person authorized by a court to act as a representative for an abused or neglected child who is the subject of a report; or

“(7) For use by a physician who has before him a child whom he reasonably suspects may be abused or neglected; or

“(8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of said child.

“(d) The names of person or information in the investigative report placed on the state’s central registry which may be made available to the alleged perpetrator’s employer, prospective employer, or others are those cases that the Department of Human Resources or the investigative hearing officer has determined child abuse or neglect to be indicated; provided, however, that in all other cases a hearing officer may make a determination or finding regarding the facts of the case and that said facts are reasonably related to whether the alleged perpetrator should be allowed to have regular and substantial contact with children and that said facts should be shared in order to protect children from abuse or neglect in residential programs and/or day care facilities as defined under the Child Care Act, Code of Alabama, 1975, Section 38-7-1 through Section 38-7-18.

“(e) In the case of any child abuse or neglect investigation which is determined to be “not indicated,” the alleged perpetrator may request after five years from the completion of the investigation that his or her name be expunged from the central registry so long as the Department of Human Resources has received no further reports concerning the alleged perpetrator during said five years, at which time the department shall expunge said name.

“(f) Any violation of this provision of confidentiality shall be a class A misdemeanor.”

Section 3. SEVERABILITY. In the event any section, sentence, clause, or provision of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining sentences, clauses, or provisions of this Act, which shall continue effective.

Section 4. REPEALER. All laws or parts of laws which conflict with this Act are hereby repealed.

Section 5. EFFECTIVE DATE. This Act shall become effective immediately upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:13 P.M.

Act No. 92-705

S.J.R. 27 – Senator Ellis

SENATE JOINT RESOLUTION

COMMENDING DR. ROBERT M. MCCHESNEY ON THE OCCASION OF HIS INAUGURATION AS THE 13TH PRESIDENT OF THE UNIVERSITY OF MONTEVALLO.

WHEREAS, on Thursday, October 8, 1992, the University of Montevallo will celebrate its 96th Annual Founders Day by the inauguration of Dr. Robert M. McChesney as its 13th President; and

WHEREAS, the University has a unique role in Alabama higher education, with its focus as a public liberal arts university, and historically has pioneered many Alabama education initiatives from its founding in 1896 as a public institution for women's education; and

WHEREAS, the University has had a long and distinguished line of educators who have served as President, and Dr. McChesney joins this line with an impressive record of academic and civic credentials and service; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we do hereby extend our sincere congratulations and best wishes to Dr. Robert M. McChesney, his wife Laraine, the Board of Trustees, Faculty, Staff, Students, Alumni and friends of the University of Montevallo on the occasion of the inauguration of Dr. McChesney as the thirteenth President of the University.

BE IT FURTHER RESOLVED, That as a token of our respect, best wishes, and desire to work closely with Dr. McChesney and the University, a copy of this resolution shall be presented to him.

Approved October 7, 1992

Time: 5:14 P.M.

Act No. 92-706

S. 18 – Senators Bedsole and Ellis

AN ACT

To amend Sections 11-98-1 and 11-98-5 of the Code of Alabama 1975, as amended by Act No. 92-562, S. 211, 1992 Regular Session, relating to emergency telephone service and communication districts; to provide further for the powers of the creating authority and the levy of an emergency telephone service charge.

Be It Enacted by the Legislature of Alabama:

Section 1. Sections 11-98-1 and 11-98-5, as amended by Act No. 92-562, S. 211, 1992 Regular Session, of the Code of Alabama 1975, are amended to read as follows:

“§11-98-1.

“As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

“(1) **CREATING AUTHORITY.** The municipal governing body of any municipality or the governing body of any county that, by passage of a resolution or ordinance, creates a communication district within its respective jurisdiction in accordance with this chapter.

“(2) **DISTRICT.** The communication district created pursuant to this chapter.

“(3) **E911.** Enhanced universal emergency number service or enhanced 911 service which is a telephone exchange communications service whereby a public safety answering point (PSAP) designated by the customer may receive telephone calls dialed to the telephone number 911. E911 service includes lines, facilities, and equipment necessary for answering, transferring, and dispatching public emergency telephone calls originated by persons within the serving area who dial 911 but E911 service does not include dial tone first which may be made available by the service provider based on the ability to recover the costs associated with its implementation and consistent with tariffs filed with and approved by the Alabama Public Service Commission.

“(4) **EXCHANGE ACCESS FACILITIES.** All lines, provided by the service suppliers for local exchange service, as defined in existing general subscriber services tariffs.

“(5) **PRIVATE SAFETY AGENCY.** Any other not-for-profit entity providing emergency fire, ambulance, rescue, or emergency medical services manned by volunteer personnel.

“(6) **PUBLIC SAFETY AGENCY.** An agency of the State of Alabama, or a functional division of a political subdivision, that provides fire fighting, rescue, natural or man-caused disaster or major emergency response, law enforcement, ambulance, or emergency medical services.

“(7) **SERVICE SUPPLIER.** Any person providing exchange telephone service to any service user throughout the county or municipality.

“(8) **SERVICE USER.** Any person, not otherwise exempt from taxation, who is provided exchange telephone service in the municipality or county.

“(9) **TARIFF RATE.** The rate or rates billed by a service supplier as stated in the service supplier’s tariffs and approved by the Alabama Public Service Commission, which represent the service supplier’s recurring charges for exchange access facilities, exclusive of all taxes, fees, licenses, or similar charges whatsoever.

“(10) **UNIFORM APPLICATION.** The rate to be charged or applied by the communication district to the exchange access rate charged to business and residential access lines.

“§11-98-5.

“(a) The board of commissioners of the district may, when so authorized by a vote of a majority of the persons voting within the district, in accordance with law, levy an emergency telephone service charge in an amount not to exceed five percent of the maximum tariff rate in the district, except that in counties with populations of less than 25,000 as determined by the most recent population census, the board of commissioners may, when so authorized by a vote of a majority of the persons voting within the district, in accordance with law, levy an emergency telephone service charge in an amount not to exceed two dollars (\$2). The governing body of the municipality or county may, upon its own initiative, call the special election. Any service charge shall have uniform application and shall be imposed throughout the entire district, to the greatest extent possible, in conformity with availability of such service in any area of the district. The district shall have service on line no later than 36 months from the start of collections or suspend all collections until the district provides the service and shall refund all collections made during this 36 month period of time.

“(b) If the proceeds generated by an emergency telephone service charge exceed the amount of moneys necessary to fund the district, the board of commissioners shall, by ordinance or resolution, as provided in this chapter, reduce the service charge rate to an amount adequate to fund the district. In lieu of reducing the service charge rate, the board of commissioners may suspend the service charge, if the revenues generated therefrom exceed the district’s needs. The board of commissioners may, by resolution or ordinance, reestablish the original emergency telephone service charge rate, or lift the suspension thereof, if the amount of moneys generated is not adequate to fund the district.

“(c) An emergency telephone service charge shall be imposed only upon the amount received from the tariff rate for exchange access lines. If there is no separate exchange access charge stated in the service supplier’s tariffs, the board of commissioners shall determine a uniform percentage not in excess of 85 percent of the tariff rate for basic exchange telephone service that shall be deemed to be the equivalent of tariff rate exchange access lines, until the service

supplier establishes the tariff rate. No service charge shall be imposed upon more than 100 exchange access facilities per person, per location. Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier. The duty of the service supplier to collect the service charge shall commence upon the date of its implementation, which shall be specified in the resolution calling the election. That emergency telephone service charge shall be added to and may be stated separately in the billing by the service supplier to the service user.

“(d) The service supplier shall have no obligation to take any legal action to enforce the collection of any emergency telephone service charge. The service supplier shall quarterly provide the board of commissioners with a list of the amount uncollected, together with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be nonpayment of the service charge. The service charge shall be collected at the same time as the tariff rate according to the regular billing practice of the service supplier. Good faith compliance by the service supplier shall constitute a complete defense to any legal action or claim that may result from the service supplier’s determination of nonpayment or the identification of service users, or both.

“(e) The amounts collected by the service supplier attributable to any emergency telephone service charge shall be due monthly. The amount of service charge collected in one calendar month by the service supplier shall be remitted to the district no later than 30 days after the close of a calendar month. On or before the thirtieth day after the close of a calendar month, a return, in the form the board of commissioners and the service supplier agree upon, shall be filed with the district, together with a remittance of the amount of service charge collected payable to the district. The service supplier shall maintain records of the amount of the service charge collected for a period of at least two years from the date of collection. The board of commissioners may, at its expense, require an annual audit of the service supplier’s books and records with respect to the collection and remittance of the service charge. From the gross receipts to be remitted to the district, the service supplier shall be entitled to retain an administrative fee in an amount equal to one percent.

“(f) In order to provide additional funding or additional real or personal property for the district, the district or county or municipal governing body may receive federal, state, county, or municipal real or personal property and funds, as well as real or personal property and funds from private sources, and may expend the funds or use the property for the purposes of this chapter.

“(g) With the agreement of the service supplier and the creating authority, two or more communication districts, or cities, or

counties, or a city and a county in another communication district may agree to cooperate, to the extent practicable, to provide funding and service to their respective areas, and a single board of commissioners of not more than seven members may be appointed to conduct the affairs of the entities involved.

“(h) A district may expend available funds to establish a common address and location identification program and to establish the emergency service number data base to facilitate efficient operation of the system. The governing body of the city or county affected shall be responsible for purchasing and installing the necessary signs to properly identify all roads and streets in the district.

“(i) Funds generated from emergency telephone service charges shall be used to establish, operate, maintain, and replace an emergency communication system that may, without limitation, consist of the following:

“(1) Telephone communications equipment to be used in answering, transferring, and dispatching public emergency telephone calls originated by persons within the service area who dial 911.

“(2) Emergency radio communications equipment and facilities necessary to transmit and receive ‘dispatch’ calls.

“(3) The engineering, installation, and recurring costs necessary to implement, operate, and maintain an emergency communication system.

“(4) Facilities to house E911 services as defined in this chapter, with the approval of the creating authority, and for necessary emergency and uninterruptable power supplies for the systems.”

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:15 P.M.

Act No. 92-707

H. 39 – Rep. Morrow

AN ACT

To authorize and approve a compact with the State of Mississippi to promote and develop trade, commerce, industry, and employment opportunities for the public good and welfare in northeast Mississippi and northwest Alabama through the establishment of a joint interstate authority to acquire certain railroad properties and facilities.

Be It Enacted by the Legislature of Alabama:

Section 1. The Governor, on behalf of this state, shall execute a compact, in substantially the following form, with the State of Mississippi, and the Legislature approves and ratifies the compact in the form substantially as follows:

**“NORTHEAST MISSISSIPPI - NORTHWEST ALABAMA
RAILROAD AUTHORITY COMPACT**

“The contracting states solemnly agree:

“ARTICLE I.

“The purpose of this compact is to promote and develop trade, commerce, industry, and employment opportunities for the public good and welfare in northeast Mississippi and northwest Alabama through the establishment of a joint interstate authority to acquire certain railroad properties and facilities which the operator thereof has notified the Interstate Commerce Commission of an intention to abandon and which are located in any of Franklin, Marion, or Winston Counties, Alabama or in Alcorn or Tishomingo Counties, Mississippi.

“ARTICLE II.

“This compact shall become effective immediately as to the State of Alabama upon its passage and approval by the Governor, or upon its otherwise becoming a law, and when the State of Mississippi ratifies the compact.

“ARTICLE III.

“For purposes of this compact, the following terms shall have the following meanings:

“(1) Person means an individual, a corporation, a partnership, or any other entity.

“(2) Railroad means a common carrier by railroad as defined in Section 1(3) of Part I of the Interstate Commerce Act [codified as 49 U.S.C. § 1(3)].

“(3) Railroad properties and facilities mean any real or personal property or interest in property which is owned, leased, or otherwise controlled by a railroad or other person, including, without limitation, the authority, and which are used or are useful in rail transportation service, including, without limiting the generality of the foregoing:

“a. Track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, engine houses, and public

improvements used or useful in providing rail transportation service.

“b. Communication and power transmission systems for use by railroads.

“c. Signals and interlockers.

“d. Terminal or yard facilities and services to express companies, railroads, and their shippers, including ferries, tugs, car floats, and related shoreside facilities designed for the transportation of equipment by water.

“e. Shop or repair facilities or any other property used or capable of being used in providing rail transportation service or in connection with such service or for originating, terminating, improving, and expediting the movement of equipment or goods.

“(4) Rail Transportation Service means freight or passenger rail service, or both.

“ARTICLE IV.

“The states that are parties to this compact, hereinafter referred to as the ‘party states,’ do hereby establish and create a joint interstate authority that shall be known as ‘The Northeast Mississippi - Northwest Alabama Railroad Authority,’ hereinafter referred to as the ‘authority.’ The authority shall be governed and all powers thereof exercised by a board of directors, hereinafter referred to as the ‘board.’ The membership of the board shall consist of the Mayor of the Town of Belmont, Mississippi, and two other citizens of the State of Mississippi, to be appointed by the governing body of the Town of Belmont, Mississippi; the Mayor of the City of Red Bay, Alabama, and two other citizens of the State of Alabama to be appointed by the governing body of the City of Red Bay, Alabama. If at the time of the election of any directors there shall be in existence in a party state any person, firm, or entity that makes use of the railroad properties and facilities owned or to be acquired by the authority, the governing body located in the party state shall elect as such directors the representative or representatives of the person, firm, or entity as designated thereby. Each of the appointive members of the board shall be a qualified elector in a county named in Article I and shall serve for a term of four years. Directors shall be eligible for reappointment. If any director dies, resigns, or becomes incapable or ineligible to act as a director, a successor shall be appointed by the governing body which appointed the director whose unexpired term is to be filled for the remaining portion of the unexpired term. The board shall hold regular and special meetings as its business may require and as the board may determine. Any meeting of the board

may be adjourned from time to time by a majority of the members present. A majority of the members of the board shall constitute a quorum for the transaction of any business. No vacancy in the membership of the board shall impair the right of a quorum to exercise all powers and duties of the authority. Members of the board shall receive no compensation for their services as directors; however, each member may be reimbursed for expenses actually incurred thereby in and about the performance of duties. The authority shall adopt rules and regulations for the transaction of its business and the secretary shall keep a record of all its business and furnish copies thereof to each member of the board. The meetings and records of the board and of the authority shall be open to the public. The board shall establish the location of the principal office of the authority, which shall be in one of the counties named in Article I. The officers of the authority shall consist of a chair, a vice-chair, a secretary, a treasurer, and such other officers as the board shall deem necessary. The chair and vice-chair shall be elected by the board from its membership and the chairship shall rotate each year among the party states in order of their acceptance of this compact. Neither the secretary nor the treasurer nor any other officer of the authority need be a member of the board. Each officer shall be elected by the board for a term of one year. Officers shall be eligible for re-election. The duties of the officers of the authority shall be such as are customarily performed by such officers and as may be prescribed by the board.

“ARTICLE V.

“Subject to this compact, the authority may exercise all powers as may be necessary or appropriate to enable it to carry out the purposes of this compact, including without limitation, the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

- “(1) To have succession by its corporate name.
- “(2) To sue and be sued in its own name in civil suit and actions.
- “(3) To adopt and make use of a corporate seal and to alter the seal at pleasure.
- “(4) To adopt and alter bylaws for the regulation and conduct of its affairs and business.
- “(5) To acquire, receive, take, and hold, whether by purchase, gift, lease, devise, or otherwise, property of every description, whether real, personal, or mixed, wherever located in any party state, and to manage the property, and to develop any undeveloped property owned, leased, or controlled by it in a manner necessary or convenient to carry out the purposes of this compact.

“(6) To make, enter into, execute, and deliver such contracts, agreements, leases, applications, permits, notifications, security documents, and other instruments and documents as may be necessary, proper, convenient, or incidental to accomplish any purpose for which the authority was created or to carry out the purposes of this compact or to exercise any power granted hereunder, including without limitation, contracts, agreements, and other documents and instruments containing such covenants, terms, and conditions as in the judgment of the board may be necessary, proper or advisable for the purpose of obtaining grants, loans, or other financial assistance from any federal or state government or any department, branch, or agency thereof for or in the aid of the acquisition or improvement of railroad properties and facilities and any and all licenses, leases, mortgages, and deeds of trust and other agreements relating to the railroad properties and facilities and the construction, operation, maintenance, repair, and improvement thereof, and to carry out and perform the covenants, terms, and conditions of all such contracts, agreements, and other documents or instruments.

“(7) To plan, establish, acquire, by purchase, gift lease, or devise, construct, enlarge, reconstruct, improve, operate, maintain, replace, repair, extend, improve, regulate, and protect railroad properties and facilities, whether or not then existing, wherever located or to be located within the boundaries of either or both of the party states.

“(8) To make the use and services of its railroad properties and facilities available to others in furtherance of the purposes of this compact and upon such terms and conditions as the board shall deem proper, and to lease the railroad properties and facilities to others upon such terms and conditions as the board may determine.

“(9) To establish schedules of tolls, fees, rates, charges, and rentals for the use of its railroad properties and facilities and to charge, alter, and collect such tolls, fees, rates, charges, and rentals in carrying out the provisions of this compact.

“(10) To issue revenue bonds and notes at any time and from time to time, for any corporate purpose or purposes, or in aid of any power under this compact, payable from the limited sources hereinafter referenced and to pledge for payment of such bonds and notes any revenues and funds from which such bonds and notes are made payable.

“(11) To exercise, with respect to property located in Alabama in the manner provided by the laws of Alabama and with respect to property located in Mississippi in the manner provided by the laws of Mississippi, the power of eminent domain with respect to

any property, real, personal, or mixed. The authority shall not acquire by eminent domain any real property or rights owned or held by railroads, transportation companies, or utilities, either public or private.

“(12) To appoint, employ, contract with, and provide for compensation of officers, employees, and agents, including engineers, attorneys, consultants, fiscal advisers, and such other employees as the business of the authority may require, including the power to fix working conditions by general rule and other conditions of employment; and at its option to provide a system of disability pay, retirement compensation, and pensions, or any of them; and to hire and fire servants, agents, employees, and officers at will.

“(13) To provide for insurance, including use and occupancy insurance, as the authority may deem advisable.

“(14) To invest any funds of the authority that the board may determine are not presently needed for its corporate purposes in any obligations which are direct general obligations of the United States of America, or which are unconditionally guaranteed as to both principal and interest by the United State of America, or in interest-bearing time deposits of any bank or savings and loan association organized under the laws of any party state or of the United States of America.

“(15) To cooperate with any party state and any county, city, town, public corporation, agency, department, or political subdivision of any party state and to make such contracts with them or any of them as the board may deem advisable to accomplish the purposes for which the authority was established.

“(16) To sell and convey any of its properties that may have become obsolete or worn out, or that ~~may no longer be needed or~~ useful.

“(17) To accept, receive, receipt for, disburse, and expend moneys or other financial assistance from the United States of America, or any department or agency thereof, and from any party state or any department, agency, or political subdivision thereof, and to receive and accept money, property, labor, or other thing of value, from any source whatever, public or private, to be used for or in aid of the acquisition, construction, extension, improvement, maintenance, and operation of railroad properties and facilities or to be used in furtherance or to accomplish, in whole or in part, any of the purposes of this compact. All federal moneys shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States of America and as are not inconsistent with the laws of any party state, and all state moneys shall be accepted and expended by the authority upon

such terms and conditions as are prescribed by the laws of the state making the funds available.

“(18) To purchase equipment and supplies necessary or convenient for the exercise of any power of the authority.

“(19) To take such action and do all things as may be necessary or convenient to carry out the purposes of this compact or the exercise of any power under this compact.

“Nothing contained in this compact shall operate or be construed to (1) permit or require any person to avoid or refuse compliance with any law, rule, regulation, order, or other controlling directive or administrative guidance, now or hereafter existing, or in force, of any federal or state government, department, branch, agency, or other instrumentality, (2) impair, limit, diminish, or otherwise affect any right, power, or jurisdiction of the United States of America or any department, branch, agency, court, bureau, or other instrumentality thereof with respect to any matter including without limitation commerce between the states, or (3) grant or confer any right or power to the authority or any officer, member of the board, or other representative thereof to regulate commerce between the states. The authority shall be subject to and shall comply with all applicable laws, regulations, rules, rulings, orders, decrees, judgments, decisions or other guidelines of the United States of America or any branch, agency, department, court, or other instrumentality having jurisdiction over the authority or any of its activities or properties or of any person acting for the authority and all rights and powers provided by this compact may be exercised only to the extent the exercise thereof does not violate any of the foregoing. This compact is subject to all provisions of federal law and other controlling federal directives applicable to the premises and is limited to the extent necessary to comply therewith.

“ARTICLE VI.

“For the purpose of aiding and cooperating with the authority in the planning, development, undertaking, construction, extension, improvement, or operation of railroad properties and facilities, any county, city, town, or other political subdivision, public corporation, agency, or instrumentality of a party state may, upon such terms and with or without consideration, as it may determine:

“(1) Lend or donate money to the authority.

“(2) Cause water, sewer, or drainage facilities, or any other facilities that it is empowered to provide, to be furnished adjacent to or in connection with the railroad properties and facilities.

“(3) Donate, sell, convey, transfer, or lease to the authority any land, property, franchise, grant, easement, license, or lease, which it may own.

"(4) Donate, transfer, assign, sell, or convey to the authority any right, title, or interest which it may have in any lease, contract, agreement, license, or property.

"(5) Furnish, dedicate, close, pave, repair, install, grade, regrade, plan, or replan streets, roads, roadways, and walks from established streets or roads to railroad properties and facilities of the authority.

"(6) Do any and all things whether or not specifically authorized in this compact, and not otherwise prohibited by law in the applicable party state, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, reconstruction, acquisition, or operation of railroad properties and facilities.

"ARTICLE VII.

"No action or suit shall be brought or maintained against any administrator, executive, manager, officer, or member of the board or the authority for or on account of the negligence of the authority or of any such person or its or his or her agents, servants or employees, in or about the construction, maintenance, operation, superintendence, or management of any railroad properties and facilities or other property owned or controlled by the authority.

"ARTICLE VIII.

"All bonds issued by the authority shall be payable solely from, and may be secured by a pledge of, the revenues derived by the authority from the operation, leasing, or sale of any or all of its railroad properties and facilities and other property, or from any other funds made available or to be made available to the authority if permitted by the terms under which the funds are made available to the authority. No bonds or notes issued or contracts entered into by the authority shall ever constitute or create an obligation or debt of any party state, or of any county, city, or town within any party state, or a charge against the credit or taxing powers of any party state, or of any county, city, or town within any party state.

"Bonds of the authority may be issued at any time and from time to time; may be in such form, either in bearer form with appurtenant coupons, and subject to registration as to principal or interest, or both, all as the board may determine, or in fully registered form without coupons, and in such denominations, may be of such tenor, may be payable in such installments and at such time or times, not exceeding 40 years from their date; may be payable at such place or places whether within or without any party state; may bear interest at such rate or rates, which may be fixed or

which may float or vary based on some index or other standard deemed appropriate by the board; and shall be payable and evidenced in such manner, all as shall not be inconsistent with this compact and as may be provided in the proceedings of the board wherein the bonds are authorized to be issued. Any bond may be made subject to redemption at the option of the authority at such time or times, and at such price or prices, and upon such notice or notices, and on such terms, and in such manner as may be provided in the proceedings of the board wherein the bonds are authorized to be issued. Bonds of the authority may be sold at public or private sale in the manner and from time to time as may be determined by the board. The authority may pay all reasonable expenses, premiums, fees, and commissions that the board may deem necessary or advantageous in connection with the authorization, sale, and issuance of its bonds. All bonds shall contain a recital that they are issued pursuant to this compact, which recital shall be conclusive that they have been duly authorized pursuant to this compact. Neither a public hearing nor the consent of any agency of any party state or any political subdivision thereof shall be prerequisite to the issuance of bonds by the authority. All bonds issued under this compact are hereby made and shall be deemed negotiable instruments.

“All bonds shall be signed, either manually or by facsimile, by the chair or the vice-chair and the secretary or the treasurer of the authority and the seal of the authority shall be affixed, either manually or by facsimile, thereto. Delivery of bonds so executed shall be valid notwithstanding any changes in the officers or in the seal of the authority after the signing and sealing of the bonds.

“Any bonds may be issued under and secured by an indenture between the authority and a trustee. The trustee may be a private person or corporation, including but not limited to, any trust company or bank having trust powers, whether the bank or trust company is located within or without any party state. In any indenture or resolution providing for the issuance of bonds, the authority may pledge, for payment of the principal of and the interest on bonds, any of its revenues to which its right then exists or may thereafter come into existence and may assign, as security for the payment, any of its leases, franchises, permits and contracts; and in any indenture, the authority may mortgage or grant security interests in any of its properties, including any that may be thereafter acquired by it. Any pledge of revenues shall be valid and binding from the time it is made and the revenues so pledged and thereafter received by the authority shall immediately become subject to the lien of the pledge without any physical delivery thereof or further act. The lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise

against the authority, irrespective of whether the parties have actual notice thereof, from the time a statement is filed for record in each county in which is located any part of the property the revenues from which are so pledged. The notice need state only the date on which the resolution authorizing the issuance of the bonds was adopted by the board, the principal amount of bonds issued, a brief description of the revenues pledged, and a brief description of any property the revenues from which are pledged.

"In any indenture or resolution authorizing the issuance of bonds and pledging for the benefit thereof revenues from any of its railroad properties and facilities, the authority shall have the power to include provisions customarily contained in instruments securing evidence of indebtedness, including without limitation, provisions respecting the collection, segregation, and application of any rental or other revenue due to or to become due to the authority, the terms to be incorporated in any lease agreement respecting any property of the authority, the maintenance and insurance of any building or structure owned by the authority, the creation and maintenance of special funds from any revenue of the authority, and the rights and remedies available in the event of default to the holders of the bonds or the trustee under the indenture, all as the board shall deem advisable. If there be any default by the authority in payment of the principal of or the interest on the bonds, or in any of the agreements on the part of the authority that may properly be included in any indenture securing the bonds, any holder of bonds, or the trustee under any indenture if authorized in the indenture, may, in addition to any other remedies herein provided or otherwise available, either at law or in equity, by suit, action, mandamus, or other proceedings, enforce payment of such principal or interest and compel performance of all duties of the board and officers of the authority, and shall be entitled as a matter of right, and regardless of the sufficiency of any security, to the appointment of a receiver in equity with all the powers of the receiver for the operation and maintenance of the property of the authority covered by the indenture and the collection, segregation, and application of revenues therefrom. The indenture may also contain provisions restricting the individual rights of action of the holders of the bonds.

"The proceeds derived from the sale of any bonds, other than refunding bonds, may be used only to pay the costs of acquiring, constructing, improving, enlarging, equipping, and operating the railroad properties and facilities, or other property with respect to which the bonds were issued, as may be specified in the proceedings in which the bonds are authorized to be issued. The costs shall be deemed to include the following: (1) the costs of any land or easements forming a part of the railroad properties and facilities or other property; (2) the cost of labor, material, and supplies used in

any construction, improvement, or enlargement, including architects' and engineers' fees, and the cost of preparing contract documents and advertising for bids; (3) the purchase price of, and the cost of installing equipment for use in connection with, the railroad properties and facilities or other property; (4) the cost of constructing and installing roads, sidewalks, curbs, gutters, utilities, and parking places in connection with the railroad properties and facilities or other property; (5) the amounts of any debt service, maintenance, and capital improvement and other similar reserves deemed advisable; (6) legal, fiscal, credit enhancement or insurance, and recording fees, premiums and expenses incurred in connection with the authorization, sale, and issuance of the bonds issued in connection with the railroad properties and facilities or other property; (7) interest on said bonds for a reasonable period prior to and during the time required for such construction, improvement, enlargement, and equipment and for not to exceed 18 months after completion thereof. If any of the proceeds derived from the sale of the bonds remains undisbursed after completion of the work and payment of all of the costs and expenses, the balance shall be used for retirement of the principal of the bonds of the same issue.

"The authority may, at any time and from time to time, issue refunding bonds for the purpose of refunding the principal of and the interest on any bonds of the authority theretofore issued hereunder and then outstanding, whether or not the principal and interest has matured at the time of the refunding, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem, retire, or purchase for retirement the bonds to be refunded. The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued. Any refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof, or by exchange of the refunding bonds for the bonds to be refunded thereby. All provisions of this compact pertaining to bonds of the authority that are not inconsistent with this paragraph shall, to the extent applicable, also apply to refunding bonds issued by the authority. The authority may, at any time and from time to time, issue bonds for the purpose of refunding the principal of and the interest on any of its bonds and for any other purpose for which it is authorized to issue bonds, in which event the provisions hereof respecting refunding bonds shall apply only to that portion of the combined issue authorized for refunding purposes and the provisions hereof respecting other financing shall apply to the remaining portion of such combined issue.

"The authority may, in addition to the other powers granted herein, borrow money for use for any corporate purpose described

herein and, in evidence of such borrowing, issue from time to time revenue notes maturing not later than 18 months from the date of issuance and bearing such rate or rates of interest as the board may provide in the proceedings when the revenue notes are authorized to be issued. The notes may be payable from the principal proceeds from the sale of bonds or, to the extent necessary, from any revenues of the authority which may be pledged to the payment of its bonds, or both, and the notes may be secured by a pledge of so much as may be necessary therefor of such revenues. Any notes may be refunded, or renewed, or extended for additional periods of not more than 18 months each from the date of maturity of the notes being refunded, or renewed, or extended, but otherwise pursuant to the terms and conditions hereof. The notes may be sold either at public or private sale as the board may determine. All provisions of this compact pertaining to bonds of the authority that are not inconsistent with the provisions of this paragraph shall, to the extent applicable, also apply to notes issued by the authority.

"The governing body of any county, city, or town within any party state may invest in bonds of the authority any money held in its treasury. Bonds issued under this compact shall be legal investments for executors, administrators, trustees, and other fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary relation, or by the document that is the source of the fiduciary's authority. The bonds shall be legal investments for savings banks and insurance companies organized under the laws of any party state.

"The directors and officers of the authority shall not be subject to any personal liability by reason of the issuance of any bonds or notes of the authority.

"ARTICLE IX.

"The authority and all contracts made by it shall be exempt from (a) all laws (1) relating to the advertising and award of construction contracts and purchase contracts and (2) limiting the duration of or requiring competitive bids in connection with any contract to be entered into by any municipality, county, public corporation, or other instrumentality; and (b) from all laws relating to or governing usury or prescribing or limiting interest rates. The authority and its contracts and properties shall be exempt from all jurisdiction of and all regulation and supervision by the public service commission or other successor or similar agency of any party state.

"All bonds or notes issued by the authority, the transfer thereof, and the income therefrom shall be exempt from all taxation by each party state and any political subdivision of any thereof. The authority and all property and income of the authority shall be exempt from all state, county, municipal, and other

local taxation, and from any assessment for public improvements. The exemption shall not be construed to exempt concessionaires, licensees, tenants, operators, or lessees of the authority from the payment of any taxes, including licenses or privilege taxes levied by any party state or any county or any municipality in any party state. All documents or instruments of whatever nature or content to which the authority is a party shall be filed for record in any county in any party state without the payment of any tax or fee other than such fee as may be authorized by law for the recording of such documents and instruments. The authority shall be exempt from all income, privilege, license, or excise taxes levied by any party state or any county, city, town, or other political subdivision thereof in respect to the income, revenue, or profits of the authority, or the privilege of engaging in any of the activities or powers in which the authority may engage or which the authority may exercise. The authority shall be exempt from all privilege, license, or excise taxes levied by any party state or any county, city, town, or other political subdivision thereof with respect to tangible personal property purchased or used by the authority.

“ARTICLE X.

“Nothing in this compact shall be construed to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other railroad project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a party state.

“ARTICLE XI.

“This compact shall continue in full force and remain binding upon each party state. At any time when the authority does not have any bonds, notes, or other obligations outstanding, including without limitation any leases under which the authority is either lessor or lessee, the legislature of each or either party state may take action to withdraw from this compact; provided, that such withdrawal shall not become effective until six months after the date of the action taken by the legislature. Notice of such action shall be given to the other party state and the authority by the secretary of state of the party state which takes such action. Upon withdrawal of a party state from this compact becoming effective as to such party state, the authority shall cease to exist and all rights, title, and interest of the authority in property located in the State of Alabama shall be vested in the City of Red Bay, Alabama, and all rights, title, and interest of the authority in property located in the State of Mississippi shall be vested in the Town of Belmont, Mississippi.

“ARTICLE XII.

“The authority shall be a nonprofit corporation and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any person, except that in the event the board determines that sufficient provision has been made for the full payment of the expenses, bonds, notes, and other obligations of the authority, any net earnings of the authority thereafter accruing shall be equally divided between the Town of Belmont, Mississippi, and the City of Red Bay, Alabama.

“ARTICLE XIII.

“There is hereby granted to the Governor, to the members of the board of the authority for Alabama, and to any executives or administrators of this compact all powers provided for in the compact. All officers of the State of Alabama are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purposes of this compact.

“ARTICLE XIV.

“The provisions of this compact are severable. If any part of this compact is declared invalid or unconstitutional, such declaration shall not affect the remaining parts.”

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:16 P.M.

Act No. 92-708

H. 5 – Reps. Hawkins, Biddle

AN ACT

To alter or rearrange the boundary lines of the City of Vestavia Hills, Jefferson County, Alabama, so as to include within the corporate limits of Vestavia Hills, Alabama, certain other territory in Jefferson County, Alabama.

Be It Enacted by the Legislature of Alabama:

Section 1. The boundary lines of the City of Vestavia Hills, Jefferson County, Alabama, be, and the same are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Vestavia Hills, Alabama, and in addition thereto the following described territory, to-wit:

PARCEL I

All of Section 5, Township 18 South, Range 1 West, less and except the N.E.1/4 of the N.E.1/4, and the northernmost 215.00 feet of the N.W.1/4 of the N.W.1/4, thereof.

The North 1/2 of the N.E.1/4 of Section 6, Township 18 South, Range 1 West lying East of the westernmost loop of the Cahaba River, less and except the north 215 feet, thereof.

The South 1/2 of the N.E.1/4 and the S.E.1/4 of Section 6, Township 18 South, Range 1 West.

The S.E.1/4 of the N.W.1/4 of Section 6, Township 18 South, Range 1 West less and except that part lying within the limits of Overton Land Company's Subdivision No. 2 as recorded in Map Book 35, Page 1 in the Probate Office of Jefferson County, Alabama.

The S.W.1/4 of Section 6, Township 18 South, Range 1 West less and except the North 400 feet of the West 400 feet thereof.

All of Section 7, Township 18 South, Range 1 West.

That part of the N.W.1/4 of the N.W.1/4 of Section 8, Township 18 South, Range 1 West being more particularly described as follows: BEGIN at the Northwest corner of said 1/4-1/4 section and run South to the Southwest corner thereof; thence northeasterly to a point on the East line of said 1/4-1/4 section, said point lying 442+ feet South of the Northeast corner of said 1/4-1/4 section; thence North to the Northeast corner of said 1/4-1/4 section; thence West to the POINT OF BEGINNING.

The S.E.1/4 of the N.E.1/4 of Section 12, Township 18 South, Range 2 West.

The West 1/2 of the N.E.1/4 of Section 12, Township 18 South, Range 2 West lying South of the Cahaba River.

The N.W.1/4 of Section 12, Township 18 South, Range 2 West, lying South of the Cahaba River and East of the Interstate Highway 459 right-of-way.

The South 1/2 of Section 12, Township 18 South, Range 2 West, lying East of the Interstate Highway 459 right-of-way.

LESS AND EXCEPT the following parcels:

1. Begin at the point of intersection of the easterly right-of-way line of Interstate Highway # I-459 and the South line of Section 12, Township 18 South, Range 2 West; thence along said South line in an easterly direction to the Southeast corner of said section; thence along the South line of Section 7, Township 18 South, Range 1 West

in an easterly direction to the Southeast corner of the Southwest 1/4 of said section; thence 90° 00' to the left in a northerly direction a distance of 10 feet, more or less, to a point; thence 90° 00' to the left and along a line 10 feet North of and parallel to said South section line in a westerly direction to a point on the west line of said section; thence along a line 10 feet North of and parallel to the South line of Section 12, Township 18 South, Range 2 West in a westerly direction to a point on the easterly right-of-way line of Interstate Highway #I-459; thence southerly along said easterly right-of-way line a distance of 10 feet, more or less, to the POINT OF BEGINNING.

2. A 10 foot wide strip of land being bound by the following described traverse and a line 10 feet parallel and northerly, north-westerly and westerly to said traverse; begin at the Southeast corner of the N.E.1/4 of the S.E.1/4 of Section 7, Township 18 South, Range 1 West; thence North along the East section line of said section to the Southwest corner of the N.W.1/4 of the N.W.1/4 of Section 8, Township 18 South, Range 1 West; thence northeasterly to a point on the East line of said 1/4-1/4 section, said point lying 442+ feet South of the Northeast corner of said 1/4-1/4 section; thence North along said East line 442+ feet to the Northeast corner of said 1/4-1/4 section; thence easterly along the North line of said section to the Northeast corner of said section; thence North along the East section line of Section 5, Township 18 South, Range 1 West to the Northeast corner of the S.E.1/4 of the N.E.1/4 of said section, said corner being the END POINT OF THE TRAVERSE LINE.

ALSO LESS AND EXCEPT the following parcels that lie within the City of Birmingham, Corporate Limits:

1. A parcel of land situated in the S.W.1/4 and the S.W.1/4 of the N.W.1/4 of Section 12, Township 18 South, Range 2 West, being more particularly described as follows:

BEGIN at the Southwest corner of the S.E.1/4 of the S.W.1/4 of Section 12, Township 18 South, Range 2 West; thence run easterly along the South line of said 1/4-1/4 section a distance of 424.88 feet to a point; thence turn 74°19'33" to the left in a northeasterly direction a distance of 204.76 feet to a point; thence turn 20°49'43" to the left in a northwesterly direction a distance of 672.23 feet to a point; thence 23°39'20" to the left in a northwesterly direction a distance of 303.11 feet to a point; thence turn 45°09'11" to the right in a northeasterly direction a distance of 390.49 feet to a point; thence turn 63°11' to the left in a northwesterly direction a distance of 302.36 feet to a point; thence turn 10°21'28" to the left in a northwesterly direction a distance of 276.11 feet to a point; thence turn 103°35'31" to the right in a northeasterly direction a distance of 403.92 feet to a

point; thence turn $105^{\circ}41'15''$ to the left in a northwesterly direction a distance of 55.07 feet to the P.C. (point of curve) of a curve to the left having a radius of 821.17 feet and a central angle of $21^{\circ}10'18''$; thence northwesterly along the arc of said curve a distance of 303.44 feet to the P.R.C. (point of reverse curve) of a curve to the right having a radius of 592.35 feet and a central angle of $57^{\circ}18'15''$; thence northwesterly along the arc of said curve a distance of 592.44 feet to the P.T. (point of tangent) of said curve; thence northwesterly, tangent to said curve a distance of 468.92 feet to the P.C. (point of curve) of a curve to the left having a radius of 473.80 feet and a central angle of $29^{\circ}04'26''$; thence northwesterly along the arc of said curve a distance of 240.42 feet to a point; then turn $86^{\circ}51'01''$ to the left (angle measured to tangent) in a southwesterly direction a distance of 64.49 feet to the P.C. (point of curve) of a curve to the right having a radius of 527.82 feet and a central angle of $23^{\circ}35'25''$; thence southwesterly along the arc of said curve a distance of 217.32 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 572.58 feet and a central angle of $5^{\circ}22'02''$; thence southwesterly along the arc of said curve a distance of 53.63 feet to a point on the easterly right-of-way line of Interstate Highway #I-459; thence turn $72^{\circ}51'08''$ to the left (angle measured to tangent) in a southeasterly direction along said right-of-way line a distance of 345.08 feet to a point; thence turn $19^{\circ}15'31''$ to the left in a southeasterly direction along said right-of-way line a distance of 162.04 feet to a point; thence turn $1^{\circ}28'19''$ to the right in a southeasterly direction along said right-of-way line a distance of 602.12 feet to a point; thence turn $9^{\circ}50'54''$ to the right in a southeasterly direction along said right-of-way line a distance of 710.76 feet to a point; thence turn $6^{\circ}53'30''$ to the right in a southeasterly direction along said right-of-way line a distance of 1392.57 feet to a point; thence turn $17^{\circ}23'25''$ to the right in a southwesterly direction along said right-of-way line a distance of 47.40 feet to a point on the South line of said Section 12; thence turn $92^{\circ}37'54''$ to the left in an easterly direction along said South line a distance of 45.10 feet to the POINT OF BEGINNING.

2. A strip of land 25 feet wide lying along the South line and the East line of the South 1/2 of the S.E.1/4 of Section 7, Township 18 South, Range 1 West.

3. A strip of land 25 feet wide lying along the northerly, northwesterly, northeasterly, westerly and easterly property lines of that part of the property located in Section 6, Township 18 South, Range 1 West and North 1/4 of Section 5, Township 18 South, Range 1 West.

4. A strip of land 25 feet wide lying along the North line of the S.E.1/4 of the N.E.1/4 of Section 5, Township 18 South, Range 1 West.

PARCEL II

A. Begin at the Northeast corner of Section 31, Township 17 South, Range 1 West, Jefferson County, Alabama, and run in a southerly direction and along the East line of said Section a distance of 950.42 feet to a point; thence turn an interior angle of $136^{\circ}44'20''$ and run to the right in a southwesterly direction a distance of 1094.87 feet to a point; thence turn an interior angle of $184^{\circ}07'40''$ and run to the left and in a southwesterly direction a distance of 87.64 feet to a point; thence turn an interior angle of $186^{\circ}23'40''$ and run to the left in a southwesterly direction a distance of 78.39 feet; thence turn an interior angle of $241^{\circ}43'30''$ and run to the left and in a southeasterly direction a distance of 889.67 feet to a point on the South line of the North half of said Section; thence turn an interior angle of $62^{\circ}54'10''$ and run to the right and in a westerly direction and along the South line of the North half of said Section a distance of 929.89 feet to the Southwest corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section; thence turn an interior angle of $179^{\circ}55'00''$ and run to the right and in a westerly direction a distance of 1348.42 feet to the Southeast corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section; thence turn an interior angle of $180^{\circ}02'30''$ and run to the left and in a westerly direction a distance of 1386.70 feet to a point; thence turn an interior angle of $38^{\circ}42'10''$ and run to the right and in a northeasterly direction a distance of 592.44 feet to a point in the centerline of an old railroad right-of-way; thence turn an interior angle of $180^{\circ}54'30''$ and run to the left and along the centerline of said right-of-way a distance of 160.20 feet to a point; thence turn an interior angle of $188^{\circ}07'00''$ and run to the left in a northeasterly direction along the centerline of said right-of-way a distance of 221.58 feet to a point; thence turn an interior angle of $180^{\circ}44'00''$ and run to the left in a northeasterly direction and along the centerline of said right-of-way a distance of **205.54 feet to a point; thence turn an interior angle of $179^{\circ}50'20''$** and run to the right in a northeasterly direction and along the centerline of said right-of-way a distance of 253.27 feet to a point; thence turn an interior angle of $167^{\circ}01'10''$ and run to the right and along the centerline of said right-of-way a distance of 1285.56 feet to a point; thence turn an interior angle of $179^{\circ}36'20''$ and run to the right in a northeasterly direction and along the centerline of said right-of-way a distance of 930.02 feet to a point; thence turn an interior angle of $179^{\circ}57'00''$ and run to the right and in a northeasterly direction and along the centerline of said right-of-way a distance of 1008.18 feet to a point; thence turn an interior angle of $180^{\circ}24'40''$ and run to the left and in a northeasterly direction a distance of 590.33 feet to a point on the East line of Section 31, Township 17 South, Range 1 West; thence turn an interior angle of $55^{\circ}31'50''$ and run to the right in a southerly direction a distance of

527.91 feet, more or less, to the point of beginning of the herein described Parcel II-A. Less and except any portion of subject property heretofore conveyed to C. O. Osborn by deed in Real Volume 789, page 290, and to J. W. Nall, Jr., by deed in Real Volume 787, page 430. Less and except that part condemned by the State of Alabama in Probate Case #92472 and as described in Real Volume 1563, page 942, for Project known as I-459-4(9).

B. Begin at the Northwest corner of the NE1/4 of the SE1/4 of Section 31, Township 17 South, Range 1 West, Jefferson County, Alabama; thence run in a southerly direction along the West line of said Quarter-Quarter a distance of 629.15 feet to its intersection with the northerly right-of-way line of Overton-Grant's Mill Road; thence turn an angle to the left of 105 degrees, 50 minutes, 26 seconds and run in a northeasterly direction along the northerly right-of-way line of said Overton-Grant's Mill Road a distance of 255.78 feet; thence turn an angle to the left of 94 degrees, 21 minutes, 56 seconds and run in a northwesterly direction a distance of 596.61 feet to its intersection with the North line of said Quarter-Quarter; thence turn an angle to the left of 70 degrees, 36 minutes, 08 seconds and run in a westerly direction along the North line of said Quarter-Quarter a distance of 40.0 feet to the point of beginning.

C. Begin at the Southeast corner of the SE1/4 of the NE1/4 of Section 31, Township 17 South, Range 1 West, Jefferson County, Alabama, and run in a westerly direction and along the South line of said 1/4-1/4 Section a distance of 33.45 feet to a point on the Southeast right-of-way line of Overton Road; thence turn an interior angle of 40°39'00" and run to the right in a northeasterly direction and along the Southeast right-of-way line of Overton Road a distance of 44.24 feet to a point on the East line of said 1/4-1/4 Section; thence turn an interior angle of 47°27'40" and run to the right and in a southerly direction and along the East line of said 1/4-1/4 Section a distance of 27.87 feet, more or less, to the point of beginning of the herein described Parcel II-C.

D. Commence at the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of Section 31, Township 17 South, Range 1 West, Jefferson County, Alabama, and run in a northerly direction and along the east line of said 1/4 - 1/4 section a distance of 111.03 feet to the point of beginning and a point on the northwest right-of-way line of Overton Road; thence turn a deflection angle of 132°32'20" to the left and run in a southwesterly direction along the northwest right-of-way line of Overton Road, a distance of 170.30 feet to a point; thence turn an interior angle of 139°21'00" and run to the right in a westerly direction and along the south line of said 1/4 - 1/4 section a distance of 291.64 feet to a point; thence turn an interior angle of 117°05'50" and run to the right and in a northwesterly direction a distance of 215.02 feet to a point; thence turn an

interior angle of $180^{\circ}00'00''$ and continue along the last described course and in a northwesterly direction a distance of 674.65 feet to a point; thence turn an interior angle of $118^{\circ}16'30''$ and run to the right and in a northeasterly direction a distance of 78.39 feet to a point; thence turn an interior angle of $173^{\circ}36'20''$ and run to the right and in a northeasterly direction a distance of 87.64 feet to a point; thence turn an interior angle of $175^{\circ}52'20''$ and run to the right in a northeasterly direction a distance of 1094.87 feet to a point; thence turn an interior angle of $43^{\circ}15'40''$ and run to the right and in a southerly direction and along the East line of said $1/4$ section a distance of 372.67 feet to a point; thence turn an interior angle of $180^{\circ}00'00''$ and continue on the last described course in a southerly direction and along the East line of said $1/4 - 1/4$ section a distance of 1212.06 feet, more or less, to the point of beginning of the herein described parcel.

E. Begin at the Southwest corner of Section 29, Township 17 South, Range 1 West, Jefferson County, Alabama, and run in a northerly direction along the West line of said Section a distance of 281.22 feet to a point on the Southeast right-of-way line of Interstate 459, thence turn an interior angle of $119^{\circ}30'$ and run to the right and in a Northeasterly direction a distance of 688.00 feet along said right-of-way line to a point; thence turn an interior angle of $104^{\circ}23'$ and run to the right and in a southeasterly direction a distance of 90.47 feet to a point; thence turn an interior angle of $157^{\circ}45'$ and run to the right in a southeasterly direction a distance of 200.00 feet to a point; thence turn an interior angle of $193^{\circ}45'$ and run to the left and in a southeasterly direction a distance of 300.00 feet to a point; thence turn an interior angle of $173^{\circ}16'$ and run to the right in a southeasterly direction a distance of 100.00 feet to a point; thence turn an interior angle of $172^{\circ}39'$ and run to the right in a southeasterly direction a distance of 50.00 feet to a point; thence turn an interior angle of $68^{\circ}29'$ and run to the right in a westerly direction along the South line of said Section a distance of 971.84 feet, more or less, to the point of beginning of the herein described parcel containing 9.02 acres, more or less.

A map of the above described territory showing the relationship of such territory to the corporate limits of the City of Vestavia Hills, Alabama, is attached hereto as Exhibit "A" and is incorporated herein by reference.

Section 2. This act shall become effective upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:17 P.M.

Act No. 92-709

S. 43 – Senator Horn

AN ACT

To make a supplemental appropriation from the State General Fund to the Military Department for the fiscal year ending September 30, 1993.

Be It Enacted by the Legislature of Alabama:

Section 1. There is appropriated from the State General Fund to the Military Department the sum of two hundred eighty thousand dollars (\$280,000) for the fiscal year ending September 30, 1993. This appropriation shall be in addition to any and all other funds appropriated to the Military Department.

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:18 P.M.

Act No. 92-710

S. 19 – Senator Bennett

AN ACT

Relating to the operation of certain tour buses in this state; to provide for the payment of the registration fee payable to Public Service Commission and the identification marker or trip permit fee payable to the Department of Revenue by a single payment submitted to the Department of Tourism and Travel; and to exempt tour buses from the motor carrier mileage tax; for this purpose amending Sections 37-3-32, 40-17-150, 40-19-1, and 40-19-2 of the Code of Alabama 1975.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 37-3-32 of the Code of Alabama 1975, is amended to read as follows:

“§37-3-32.

“In addition to all of the taxes and fees prescribed by law, motor carriers shall pay to the commission under the provisions of this chapter the following:

“(1) Every application for a certificate of public convenience and necessity or permit under this chapter shall be accompanied by an application fee in the amount of \$100.00.

“(2) Every application for an amendment of a certificate of public convenience and necessity or permit shall be accompanied by an application fee of \$100.00.

"(3) Every application for transfer of a certificate of public convenience and necessity or permit shall be accompanied by a fee of \$25.00.

"(4) Every application for approval of a lease of a certificate of public convenience and necessity for a period of more than six months shall be accompanied by a fee of \$10.00.

"(5) a. For every motor vehicle to be used by a motor carrier on the highways of the state of Alabama there shall be paid a registration fee in the amount of \$6.00, and the commission is given authority to adopt reasonable rules and regulations for the issuance of an appropriate or distinguishing number for each such motor vehicle upon which the registration fee prescribed by this chapter shall have been paid and such registration or distinguishing number shall remain with the motor vehicle for which it was issued and shall be nontransferable.

"b. The registration fee for tour buses, as defined in Section 40-19-1(10), shall be paid pursuant to Section 40-17-150(e).

"c. It shall be unlawful for a motor vehicle to be operated on the highways of this state without having conspicuously displayed on its sides a registration or distinguishing number prescribed and issued for the vehicle by the commission under this chapter.

"d. Of such registration fee, \$1.00 shall be paid into the state treasury in the motor carrier fund as provided in this section. The remaining portion of this fee shall be paid over to the treasurer and shall be held in the commission's operating fund, and shall be paid out by the treasurer in payment of expenses incurred by the commission in the regulation of motor carriers upon warrants drawn as provided by law upon the treasurer and approved as required by law.

"The commission may negotiate and enter into written reciprocity agreements with other states regarding the payment of these fees.

"All tax penalties, fees, and allowances collected under this chapter, except those registration fees in excess of \$1.00 collected under subsection (5) above shall be paid into the state treasury within 30 days after their receipt and shall be kept separate and apart from all other funds by the state treasury in a fund to be known as the 'motor carrier fund'."

Section 2. Section 40-17-150 of the Code of Alabama 1975, is amended to read as follows:

"§40-17-150.

"(a) The commissioner shall provide by regulation for the issuance of an identification marker for every such motor vehicle

for a fee of \$12.00 per vehicle per year. The identification marker shall be in such form and of such size as the commissioner may prescribe.

“(b) Such identification marker shall be attached or affixed to the vehicle in the place and manner prescribed by the commissioner so that the same is clearly displayed at all times.

“(c) The identification markers herein provided for shall be issued on an annual basis as of January 1 each year and shall be valid through the next succeeding December 31.

“(d) All identification markers issued by the commissioner shall remain the property of the state.

“(e) For tour buses, as defined in Section 40-19-1(10), the fee levied by this section (fuel identification marker fee or trip permit fee) and the motor carrier registration fee levied pursuant to Section 37-3-32(5)

a. shall be paid by a single payment which may be paid by check, money order, or other means as may be provided by regulation and shall be submitted to the Department of Tourism and Travel payable to the Department of Revenue.

“(f) The proceeds from the issuance of the identification marker fees collected shall accrue to the credit of, and be deposited in, the public road and bridge fund.

“(g) It shall be a violation of this article for a motor carrier to operate or cause to be operated in this state any motor vehicle as defined herein unless the motor vehicle displays the required identification marker in the manner designated by the commissioner; provided, that the commissioner by regulation may exempt from the requirement for displaying the identification marker such motor vehicles as urban and public transit motor vehicles or others if in his discretion they are clearly identifiable and the effective enforcement of this article will not suffer thereby.

“(h) In addition, the commissioner of revenue may authorize the operation of a motor vehicle without the identification marker required by issuing a trip permit, valid for not exceeding seven days, for a fee of \$12.00 payable in advance. Trip permits are to be obtained by motor carriers having only occasional or infrequent trips into and through the state. To be valid a trip permit must be supported by a valid invoice of current date showing that sufficient tax-paid fuel was purchased in the state to propel the vehicle for the number of miles it traveled over the highways of the state.

“(i) In order for the department to have sufficient time in which to prepare the identification markers for transmittal to the motor

carrier, every motor carrier subject to this article shall, between the dates of October 1 and November 15 of each year, furnish to the department of revenue an application, listing all motor vehicles operated by the motor carrier and for which an identification marker is required, giving for each vehicle the make, serial number and type fuel used. Such application shall be accompanied by a remittance in an amount sufficient to cover the fee or fees herein provided for.

“(j) Motor carriers acquiring additional motor vehicles after the date of November 15 of each year must obtain an identification marker for each such motor vehicle before operating said motor vehicle over the streets and highways of this state.”

Section 3. Section 40-19-1 of the Code of Alabama 1975, is amended to read as follows:

“§40-19-1.

“The following words, terms and phrases, when used in this chapter, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“(1) **VEHICLE TRANSPORTING PROPERTY.** A straight truck with two axles, a trailer, a truck semitrailer with three axles and a straight truck with three axles.

“(2) **MOTOR CARRIER.** Any person, firm, partnership, association, joint stock company, corporation, lessee, trustee or receiver appointed by any court controlling, operating or managing any motor vehicle used for the transportation of persons or property for hire.

“(3) **DEPARTMENT.** The department of revenue of the state of Alabama.

“(4) **COMMISSIONER.** The commissioner of revenue of the state of Alabama.

“(5) **TAXPAYER.** Any person, firm, partnership, association, joint stock company, corporation, lessee, trustee or receiver appointed by any court liable for taxes under this chapter.

“(6) **PERSON.** Any individual, firm, copartnership, association, corporation, receiver, trustee or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

“(7) **SEATING CAPACITY.** The actual number of regular passenger-carrying seats in a motor vehicle.

“(8) **REGULAR PASSENGER-CARRYING SEATS.** A seat ordinarily and customarily used by one passenger but does not include folding or collapsible emergency aisle seats.

“(9) AXLE. A shaft on which a wheel or wheels run and, for the purposes of this article, two such shafts connected in tandem and commonly known as a tandem axle shall be considered one axle when not equipped with dual wheels on either end of either shaft of such tandem axle.

“(10) TOUR BUS. Any motor vehicle used for hire for transportation of persons and their personal property on a charter which originates within or without the boundaries of the state of Alabama, the itinerary of which is not of an established, repetitively scheduled nature utilizing routes and time schedules approved by the Public Service Commission.”

Section 4. Section 40-19-2 of the Code of Alabama 1975, is amended to read as follows:

“§40-19-2.

“(a) The mileage tax required under the provisions of this chapter to be paid by the contract carriers and common carriers, subject to the provisions of this chapter, to the state as compensation for use of the public highways of the state shall be paid to the department of revenue as required under this chapter. All said mileage taxes, fees and penalties collected by the department of revenue shall be paid into the treasury upon receipt thereof and shall be kept separate and apart by the treasurer in said fund, to be known as the motor carrier fund.

“(b) All tour buses are exempt from the tax imposed by this chapter.

“(c) All vehicles used as a ‘chartered party’ vehicle and used in support of a ‘charter party’ contract in compliance with International Registration Plan (IRP), requirements shall be exempt from the tax imposed by this chapter when used in support of a charter party contract.”

Section 5. The provisions of this act shall be effective the first day of the third month following its passage and approval by the Governor, or its otherwise becoming a law.

Approved October 7, 1992

Time: 5:19 P.M.

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That when the two houses adjourn on today, Thursday, October 1, 1992, they adjourn sine die.

Approved October 7, 1992

Time: 5:20 P.M.

Act No. 92-712

H. 88 – Rep. Harper

AN ACT

To make an appropriation to the Legislative Council for the 1992-93 fiscal year.

Be It Enacted by the Legislature of Alabama:

Section 1. Of the funds appropriated to the Legislative Council for the 1991-92 fiscal year that reverted to the General Fund on or after October 1, 1992, a sum of up to eighty thousand dollars (\$80,000) or so much thereof as is reverted is appropriated to the Legislative Council for expenditure during the 1992-93 fiscal year. The appropriation made by this act is in addition to any other appropriation for the same purposes.

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:21 P.M.

Act No. 92-713

H. 80 – Rep. Turner

AN ACT

To make an appropriation to the Alabama Historical Commission for capital outlay to complete the renovation of the State Capitol for the fiscal year ending September 30, 1993.

Be It Enacted by the Legislature of Alabama:

Section 1. There is hereby appropriated for the fiscal year ending September 30, 1993, the sum of five hundred thousand dollars (\$500,000), out of the funds in the State General Fund to the

Alabama Historical Commission for capital outlay to complete the renovation of the State Capitol.

Section 2. This act shall become effective October 1, 1992.

Approved October 7, 1992

Time: 5:22 P.M.

Act No. 92-714

H. 82 – Rep. Morrow

AN ACT

To amend Section 26-17-7 of the Code of Alabama 1975, to provide that certain actions commenced in the name of the state regarding paternity matters shall be brought by the Department of Human Resources.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 26-17-7 of the Code of Alabama 1975, is amended to read as follows:

“§26-17-7.

“Actions commenced under this chapter by the Department of Human Resources shall be in the name of the state of Alabama on relation of the complaining witness or party against the person claimed to be the father or against the person alleged to owe a duty of support as the defendant. In any action brought by the department, the district attorney, special prosecutor, or attorney otherwise authorized to represent the state of Alabama shall appear and prosecute the proceedings brought under this chapter.”

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:23 P.M.

Act No. 92-715

S.J.R. 31 – Senator Bailey

SENATE JOINT RESOLUTION

URGING THE HISTORICAL COMMISSION TO PRESENT A COMPREHENSIVE PLAN TO THE LEGISLATURE REGARDING THE ALLOCATION OF FUNDS AVAILABLE.

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That we hereby direct the Historical Commission to present a comprehensive plan to each member of the Legislature regarding the allocation of all funds received by the Commission from the Transco Settlement. Provided, however, the funds distributed pursuant to the existing federal court order are excluded from any financial plan to be presented by the Historical Commission.

Approved October 7, 1992

Time: 5:24 P.M.

Act No. 92-716

H. 4 – Reps. Holley, Parker (P), White, Walker, Smith (C), Powell

AN ACT

To provide for the creation of an Alabama Education Foundation For Kindergarten through Grade Twelve Public Schools; provide for its operation; provide for its acceptance of contributions, grants, appropriations and donations; provide for the investment of said funds; provide for distribution of funds; and provide for the creation of perpetual trusts to support the programs of local schools and local school systems.

Be It Enacted by the Legislature of Alabama:

Section 1. Legislative Findings and Intent.

The Legislature hereby finds and declares that it is necessary, desirable and in the best interests of the future of the state that the children of Alabama receive the best education possible within the limited resources available to the citizens of the state. The Legislature also recognizes that individuals, businesses, and corporations interested in enhancing the educational programs of public schools in the state hold considerable wealth. It is the intention of the Legislature by passage of this act to authorize the formation of a public corporation to encourage and promote private giving, the creation of perpetual trusts, and the prudent investment of available funds, from any source, to enhance the achievement of academic excellence in Alabama's kindergarten through grade twelve public schools.

Section 2. Incorporation Authorized.

The Governor, the Speaker of the House of Representatives, the Lieutenant Governor and the State Superintendent of Education may become a corporation with the power and authority hereinafter provided by proceeding according to the provisions of

this act. This corporation shall be known as the Alabama Education Foundation For Kindergarten through Grade Twelve Public Schools.

Section 3. Application for Incorporation.

(a) To become a corporation, the Governor, the Speaker, the Lieutenant Governor and the State Superintendent of Education shall present to the Secretary of State of Alabama an application signed by them which shall set forth:

(1) The name, official designation and official residence of each of the applicants;

(2) The dates of the beginning and ending of the term of office of each of the applicants;

(3) The name of the proposed corporation;

(4) The location of the principal office of the corporation; and

(5) Any other matter relating to the incorporation which the applicants may choose to insert and which is not inconsistent with this act or the laws of the state of Alabama.

(b) The application shall be subscribed and sworn to by each of the applicants before an officer authorized by the laws of this state to take acknowledgements to deeds.

(c) The Secretary of State shall examine the application; and, if he finds that it substantially complies with the requirements of this act, he shall receive and file it and record it in the appropriate book of records in his office.

Section 4. Certificate of Incorporation.

When the application has been made, filed and recorded as herein provided, the applicants shall constitute a corporation under the name of the Alabama Education Foundation For Kindergarten through Grade Twelve Public Schools and the Secretary of State shall make and issue to the applicants a certificate of incorporation, under the great seal of the state, and shall record the certificate with the application. No fees shall be paid to the Secretary of State for any work in connection with the incorporation of the corporation, which is hereinafter sometimes called "the foundation."

Section 5. Board of Trustees and Officers.

(a) The foundation shall be governed by a twelve member board of trustees consisting of the following: the Governor and two members appointed from the state at large by the Governor, the Speaker of the House and two members from the House of Representatives

appointed by the Speaker, the Lieutenant Governor and two members from the Senate appointed by the Lieutenant Governor, the State Superintendent of Education or his designee, one member of the State Board of Education elected by such Board's membership, and the Secretary-Treasurer of the Teachers' Retirement System of Alabama or his designee. The appointed members shall serve terms concurrent with their appointing authority. Of the appointments made by the Governor, the Lieutenant Governor, and the Speaker of the House, one of each of the two appointments by these appointing authorities shall be black.

(b) The Governor shall serve as president of the board. The State Superintendent of Education shall serve as secretary of the board. The board shall elect a vice-president and such other officers as it may determine from among its other members. The board may appoint such other officers or committees as it shall deem appropriate. No officer or member of the board of trustees of the foundation shall be entitled to any compensation for acting as such, but each shall be entitled to be reimbursed for the reasonable and necessary expenses incurred by him in the discharge of his official duties. The board may establish and appoint such advisory committees as it shall deem necessary and appropriate to accomplish the purposes of this act.

(c) The board shall meet at the call of its president or upon the call of a petition signed by four or more members.

(d) The State Superintendent of Education shall cause the State Department of Education to provide staff, office space, and administrative support and to pay the necessary expenses for the foundation. The Legislature may from time to time appropriate funding to defray the expenses of the foundation, either by separate line or by inclusion in the operations and maintenance line, to the State Department of Education. The State Department of Education is authorized to pay the Retirement Systems of Alabama the cost of an annual audit of the foundation funds.

Section 6. Purpose of the Foundation.

The purpose of the foundation shall be to promote academic excellence in Alabama's public schools and to aid and assist in any undertaking in connection with such promotion. The foundation shall receive, invest, maintain, and apply the income and principal of donated monies for educational and eleemosynary purposes, related to the promotion, development, enhancement, and growth of kindergarten through grade twelve public education in Alabama.

Section 7. Powers of the Foundation.

The foundation shall have the following powers:

- (1) To have succession by its corporate name in perpetuity;
- (2) To sue and to be sued and to prosecute and defend in any court having jurisdiction of the subject matter and of the parties thereto;
- (3) To adopt and use a corporate seal and to alter the seal at pleasure;
- (4) To adopt and amend bylaws;
- (5) To execute contracts and other necessary documents;
- (6) To acquire by gift, grant, purchase, or otherwise, and to hold title to, real or personal property, or both, together with all rights incidental thereto;
- (7) To invest and reinvest any funds of the foundation in any instrument, obligation, security, or property that constitutes a legal investment of the Teachers' Retirement System of Alabama.
- (8) To solicit and accept devises, bequests, grants, and donations;
- (9) To promulgate rules and regulations; and
- (10) To have all other powers necessary or desirable to accomplish its corporate purposes.

Section 8. Acceptance of Appropriations, Gifts, and Grants.

The foundation is authorized to seek and to accept gifts, devises, grants, or bequests and to hold or expend the same to carry out the provisions of this act. The foundation is authorized to accept appropriations or grants from the state, any county, any municipality, any local board of education, any local public school under the control of a local board of education, or any organized group recognized by a local school such as a local parent-teacher organization or school booster club, and the foundation may hold or expend the same to carry out the provisions of this act.

Section 9. Management and Disbursement of Assets and Earnings.

(a) All gifts, grants, devises, and bequests to the foundation whether from individuals, associations, corporations, companies, or governmental entities, including local boards of education or local public schools, shall be deposited by the foundation with the Teachers' Retirement System of Alabama. The Retirement System shall invest and reinvest such donations and all income therefrom as it invests its own monies. The foundation shall insure that the Retirement System maintains such records as to separately

account for the foundation's monies, both principal and income, by school or school system as the case may be. The foundation shall be responsible for authorizing the Retirement System to make any disbursement of income other than for investment or reinvestment.

(b) Any public school system may withdraw annually up to eighty percent (80%) of the income generated from any account held by the foundation in its name or in the name of any public school under the control of the system. Any funds withdrawn by a public school system may be expended for classroom supplies or equipment, equipment for science or mathematics laboratories, vocational equipment, computer hardware or software or any other equipment or supplies directly related to student instruction. None of the funds may be expended for salaries, maintenance of the physical plant or ordinary current operating expenses of a school system. Any funds held in the name of a local public school shall be expended for the benefit of such school as recommended by the principal of the school and approved by the local superintendent. Twenty percent (20%) of the income for each account shall be transferred annually to principal so as to create a perpetual trust for the benefit of the local public school or school system as the case may be. Any income not withdrawn at the end of the year shall be transferred to principal. Any capital gains from investment shall be treated as principal.

(c) Any public school wishing to make a withdrawal shall make the request to the local superintendent who shall approve the request and submit the request along with any request for that public school system to the foundation during the month of June each year. The foundation board during the month of July shall review each request received and shall approve the request if it meets the guidelines of amount and use. The foundation shall forward authorization for disbursements of income to the Retirement System during the month of August. The Retirement System shall disburse funds approved by the foundation as soon after the start of school each year as is practical.

(d) In the event of a closure or merger of a public school or public school system which has funds on deposit with the foundation, the local superintendent shall send written notice of such event to the foundation with a suggested disposition of the funds held for such public school or public school system. The foundation trustees shall have authority to accept or reject such suggestion after due consideration. The trustees shall have authority to determine final disposition of the funds. The decision of the foundation trustees shall be final and shall not be subject to appeal. The foundation shall notify the Retirement System of closures or mergers and of the trustees' decision on disposition of account assets.

Section 10. Reports to the Legislature.

The foundation shall report to the Legislature annually at each regular session with respect to the balances of funds held, additions to the foundation, earnings of the foundation, and disbursements by the foundation by beneficiary since its last report and any other information requested by the legislature.

Section 11. Exemptions from Taxation.

(a) All assets and properties of the foundation, the income therefrom and all other income of the foundation shall forever be exempt from any form of taxation in the state of Alabama whether imposed by the state, a county, or a municipality.

(b) All gifts, grants, devises, and bequests to the foundation by individuals, associations, corporations, and companies shall be exempt from all county and municipal taxes and shall be deductible from state income taxes in accordance with Section 40-18-15, Code of Alabama, 1975 as amended.

Section 12. Nonprofit and Public Nature of the Foundation.

It is the intention of this act that the foundation be a nonprofit public corporation. No part of the net earnings of the foundation shall inure to the benefit of any private individual, firm, or corporation.

Section 13. Dissolution of the Foundation.

In the event of dissolution, which may be accomplished only by legislative act, the residual assets of the foundation shall be turned over to another public corporation or organization which is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended. The foundation trustees shall to the extent possible consider the desires of the beneficiary entities when determining final distribution of assets. The decision of the foundation trustees shall be final and shall not be subject to appeal.

Section 14. Repealer Clause.

All laws or parts of laws in direct conflict with this act are hereby repealed.

Section 15. Severability Clause.

The provisions of this act are expressly declared to be severable. If any provision of this act is adjudged to be invalid or unconstitutional by any court of competent jurisdiction, such provision shall be severed and such judgement or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the operation of such judgement shall be confined to the clause,

sentence, paragraph, section, or part of this act so adjudged to be invalid or unconstitutional.

Section 16. Effective Date.

This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 7, 1992

Time: 5:25 P.M.

Act No. 92-717

H.J.R. 77 – Reps. Venable, Buskey (JE),
Zoghby, Curry

HOUSE JOINT RESOLUTION

CREATING A JOINT INTERIM LEGISLATIVE COMMITTEE ON ELECTION LAW REFORM.

WHEREAS, it is necessary for the Legislature to provide for fair and accurate elections in a democratic society; and

WHEREAS, among other issues there exist considerable conflicts in the current election laws, the costs involved in holding elections have increased dramatically, and the increased use of absentee ballots presents a potential for abuse; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That there is hereby created a joint interim legislative committee to study election law reform. The committee shall be composed of four members of each house, to be appointed by the presiding officer of each house. The chair and vice chair of the committee shall be elected at the first meeting by the members of the committee. The committee shall study all facets of the laws relating to elections.

An Advisory Committee, whose members shall receive no remuneration, shall be formed with one member being appointed by each of the following: the President of the Alabama Probate Judges Association; three Judges appointed by the President of the Alabama Probate Judges Association; the President of the Alabama Association of Clerks and Registers; the President of the Alabama Association of Boards of Registrars; the President of the Alabama Sheriff's Association; the Secretary of State; and others the committee may deem advisable.

Upon the request of the chair, the Secretary of the Senate and the Clerk of the House shall provide the clerical assistance necessary for the committee's work. The committee shall report its findings, conclusions, and recommendations to the Legislature not later than the 5th legislative day of the 1993 Regular Session, whereupon, the committee shall stand dissolved and discharged of any further duties and liabilities. Each member of the committee shall be entitled to his or her regular legislative compensation, his or her per diem, and travel expenses for each day he or she attends a meeting of the committee which be paid out of any funds appropriated to the use of the Legislature, upon warrants drawn on the State Comptroller upon requisitions signed by the chair of the committee. Notwithstanding the foregoing, no member shall receive additional legislative compensation or per diem when the Legislature is in session or if a member is being paid any other payments on the same dates for attendance of other state business. The total expenditures of the committee shall not exceed five thousand dollars (\$5,000).

Approved October 8, 1992

Time: 4:15 P.M.

Act No. 92-718

H. 70 – Rep. Harper

AN ACT

To provide that all appropriations from the State General Fund and the Alabama Special Educational Trust Fund for the fiscal year ending September 30, 1992 shall be reduced to the level allotted from the fund as of September 30, 1992 by the Department of Finance and shall include any amounts subsequently allotted from the Alabama Special Educational Trust Fund pursuant to the 1.5% reduction in proration announced on September 29, 1992 for the fiscal year 1991-92 and provide that any revenue deposited into the State General Fund or the Alabama Special Educational Trust Fund in excess of the amount required to cover that level of appropriations from said funds shall be carried over to the fiscal year beginning October 1, 1992.

Be It Enacted by the Legislature of Alabama:

Section 1. Legislative Intent.

It is the intent of the Legislature that any revenue accruing to the State General Fund in excess of that required to fund pending appropriations at the level allotted by the Department of Finance as of September 30, 1992 for the fiscal year ending September 30, 1992 shall be carried forward to the fiscal year beginning October 1, 1992. It is further the intent of the Legislature that these funds be available to ease fiscal constraints in the fiscal year ending September 30, 1993.

Section 2. It is the intent of the Legislature that any revenue accruing to the Alabama Special Educational Trust Fund in excess of that required to fund pending appropriations at the level allotted by the Department of Finance as of September 30, 1992 for the fiscal year ending September 30, 1992 and any amounts subsequently allotted pursuant to the 1.5% reduction in proration announced by the Governor on September 29, 1992 for the fiscal year 1991-92 shall be carried forward to the fiscal year beginning October 1, 1992.

Section 3. Any appropriation from the State General Fund or from the Alabama Special Educational Trust Fund for the fiscal year ending September 30, 1992 to any agency, board, commission, department or other entity is hereby reduced to the above described levels as of September 30, 1992 by the Department of Finance.

Section 4. Any revenue accruing to the State General Fund and the Alabama Special Educational Trust Fund for the fiscal year ending September 30, 1992 in excess of the amount required to cover the above amounts from those funds as of September 30, 1992 shall remain in the State General Fund and the Alabama Special Educational Trust Fund and shall be carried forward to be available for the fiscal year beginning October 1, 1992.

Section 5. All laws or parts of laws which conflict with this act are hereby repealed.

Section 6. This act shall become effective immediately following its passage and approval by the Governor or upon its otherwise becoming a law.

Approved October 8, 1992

Time: 4:16 P.M.

Act No. 92-719

S. 36 – Senator Mitchell

AN ACT

Relating to the Department of Archives and History and the powers, duties, and authority of the department over certain state property; amending Section 36-16-8, Code of Alabama 1975, relating to the property inventory control division of the Office of State Auditor to allow certain objects to be transferred to the Department of Archives and History; amending Section 41-6-10, Code of Alabama 1975, relating to the transfer of certain official books, records, documents, papers, and files by any state or county officials to the department for permanent preservation; authorizing the department to transfer certain property, quiet title to certain abandoned property, collect fees for certain services, establish a store, and deposit

funds in revolving funds to be expended by the department; and making appropriations to the department from the revolving funds.

Be It Enacted by the Legislature of Alabama:

Section 1. Sections 36-16-8 and 41-6-10, Code of Alabama 1975, are amended to read as follows:

“§36-16-8.

“The property inventory control division shall establish a control in the following manner of all nonconsumable state personal property not exempt under section 36-16-11:

“(1) The head of each department or agency of the state shall designate one of its employees as property manager for the department or agency, whose duty shall be to make a full and complete inventory of all nonconsumable personal property, except books, of the value of one hundred dollars (\$100) or more owned by the state and used by the department or agency, and all such property hereafter acquired, which inventory shall show the complete description, manufacturer’s serial number, cost price, date of purchase, location and custodial agency, responsible officer or employee, and the state property control marking. A copy of the inventory shall be submitted to the property inventory control division on October 1 and April 1 of each year. Each inventory shall show all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, then a complete explanation accounting for the property or the disposition thereof shall be attached to and submitted to the property inventory control division with the inventory. All property managers shall keep at all times in their files a copy of all inventories submitted to the property inventory control division, and the copies shall be subject to examination by any and all state auditors or employees of the department of examiners of public accounts.

“(2) Each property manager shall be the custodian of and responsible for, all property in his or her department or agency. If any property is entrusted to other employees or officers of the department or agency, then the property manager shall require a written receipt of the property so entrusted, which receipt shall be executed by the person receiving the property. Upon transfer of the property, the property manager shall be relieved of responsibility of the property, and the employee or officer of the department or agency shall then become responsible for the property.

“(3) No such property, except property being transferred to the Department of Archives and History under Section 41-6-10, Code of Alabama 1975, shall be disposed of, transferred, assigned, or entrusted to any other department, agency, or employee thereof without the written permission of the director of the Alabama

department of economic and community affairs or the governor of the state of Alabama or the designee of either of them.

“(4) The property inventory control division shall conduct annually an inventory of all such state personal property excluding historical materials in the custody of the Department of Archives and History, holding every officer or employee strictly accountable for all personal property assigned to his or her custody.

“(5) Whenever any property manager ceases for any reason to be the property manager of his or her department or agency, the director of the department or agency shall immediately notify in writing the property inventory control division. The division shall immediately check the inventories of all property in the department or agency, and the successor to the property manager shall execute a written receipt for all such property received by him or her or coming into his or her custody or control. The last payment of salary due the property manager shall be withheld until the complete check of the inventory of the property has been made and approved. The property manager shall be held strictly accountable for any shortages. The property manager shall not be held accountable for property which he or she has entrusted to any other employee or officer of the department or agency and for which he or she holds the written receipt of such employee or officer.”

“§41-6-10.

“Any state, county or other official may turn over to the department for permanent preservation therein any objects, official books, records, documents, original papers, newspaper files, and printed books not in current use the offices and that are determined by the Department of Archives and History to be of historical value. The Director of the Department of Archives and History shall develop guidelines and procedures for the appraisal and transfer of historical objects to the department from state, county, or other offices. Objects and other tangible items acquired for the historical collections of the Department of Archives and History shall be documented and maintained in accordance with an overall inventory control system for historical collections in the department as established by the director.”

Section 2. For purposes of Sections 3 to 9, inclusive, of this act, the following terms shall have the following meanings:

(1) **BOARD.** The Board of Trustees of the Department of Archives and History.

(2) **DE-ACCESSION.** To remove from the collection of the Department of Archives and History.

(3) **DEPARTMENT.** The Department of Archives and History.

(4) **DIRECTOR.** The Director of the Department of Archives and History.

(5) **LOAN.** A deposit of property not accompanied by transfer of title to the property.

(6) **PROPERTY.** Includes all books, materials, documents, and tangible objects in the possession of the Department of Archives and History.

(7) **UNDOCUMENTED PROPERTY.** Property in the possession of the Department of Archives and History for which the department cannot determine by reference to the department's records the property's owner.

Section 3. (a) The director, subject to the approval of the board, may from time to time de-accession property in the possession of the department. The director shall develop guidelines and procedures for the de-accession and transfer of property including, but not limited to, those that no longer fall within the department's collecting guidelines, that duplicate items in the collection, or that are no longer deemed appropriate for the department's collections. The transfer of historical materials may be made in any of the following ways:

(1) By return to the donor or donors.

(2) By gift to other cultural institutions.

(3) By trade with other institutions.

(4) By sale.

(5) By any other manner consistent with accepted practices for museums and archives.

(b) There is created in the state treasury a fund to be known and designated as the Archives Historical Collections Fund. Any revenue collected from the sale or transfer of any historical materials pursuant to subsection (a) shall be deposited in the State Treasury to the credit of the Archives Historical Collections Fund.

(c) The expenditure of any funds collected under subsection (b) shall be solely for acquisitions or conservation of permanent collections for the department and in accordance with guidelines approved by the board.

(d) No funds deposited in the State Treasury to the credit of the Archives Historical Collections Fund shall be expended for any purpose whatsoever unless the funds have been allotted and budgeted in accordance with the provisions of Article 4 (commencing

with section 41-4-80), Chapter 4, Title 41, Code of Alabama 1975, and only in the amounts and for the purposes provided by the Legislature.

(e) Funds deposited in the Archives Historical Collections Fund shall not revert to the General Fund of the state but shall remain in the Archives Historical Collections Fund until expended by the department.

(f) There is appropriated from the Archives Historical Collections Fund to the department the sum of five thousand dollars (\$5,000) for the fiscal year ending September 30, 1993.

Section 4. (a) Property on loan to the department, subject to a loan agreement, shall be deemed to be donated to the department if no claim is made or action filed to recover the property after termination or expiration of the loan, and if the department has given notice pursuant to Section 6 of this act and no assertion of title has been filed within 90 days from the date of the second published notice.

(b) The department may terminate a loan of property if the property was loaned to the department for an indefinite term and the property has been held by the department for five years or more. Property on "permanent loan" shall be deemed to be loaned for an indefinite term.

(c) If property was loaned to the department for a specified term, the department may give notice of termination of the loan at any time after expiration of the specified term.

(d) When the department accepts a loan of property, the department shall inform the owner in writing of the requirements of this act.

(e) It is the responsibility of the owner to notify the department promptly in writing of any change of address or change in ownership of the property.

(f) When a loan expires, the department shall make every effort, using the last known address of the owner, to locate the owner or the owner's heirs. The department shall document all efforts to locate the owner.

Section 5. Any undocumented property that has been held by the department for five years or more and has remained unclaimed shall be deemed to be abandoned. The undocumented property shall become the property of the department if the department has given notice pursuant to Section 6 of this act and no assertion of title has been filed for the property within 90 days from the date of the second published notice.

Section 6. (a) When the department is required to give notice of the abandonment of property or of termination of a loan, the department shall mail notice by certified mail, return receipt requested, to the last known owner at the most recent address of the owner as shown on the department's records. If the department does not know the identity of the owner, or does not have an address for the owner, or does not receive written proof of receipt of the mailed notice within 30 days of the date the notice was mailed, the department shall publish notice, at least once each week for two consecutive weeks, in a newspaper of general circulation in both Montgomery County and the county in which the last known address, if available, of the owner, if known, is located.

(b) The published notice shall contain all of the following:

(1) A description of the unclaimed property.

(2) The name and last known address of the owner, if available.

(3) A request that all persons who may have any knowledge of the location of the owner provide written notice to the department.

(4) A statement that if written assertion of title is not presented by the owner to the department within 90 days from the date of the second published notice, the property shall be deemed abandoned or donated and shall become the property of the department.

(c) If no written assertion of title has been presented by the owner to the department within 90 days from the date of the second published notice, title to the property shall vest in the department, free of all claims of the owner and of all persons claiming under the owner.

(d) One who purchases or otherwise acquires property from the department acquires good and marketable title to the property if the department has acquired title to the property under this section.

Section 7. (a) The department may apply conservation measures to or dispose of undocumented property if immediate action is required to protect the property or other property in the custody of the department, or if the property is a hazard to the health and safety of the public or the department staff.

(b) Unless there is a written stipulation in the loan agreement to the contrary, the department may apply conservation measures to or dispose of property on loan to the department without the owner's permission or formal notice if immediate action is required to protect the property on loan or other property in the custody of the department, or if the property on loan is a hazard to the health

and safety of the public or the department staff and if any of the following apply:

(1) The department is unable to reach the owner at the owner's last known address or phone number if action is to be taken within more than three days but less than one week from the time the department determined action was necessary.

(2) The department is unable to reach the owner at the owner's last known phone number prior to taking action if the action is to be taken within three days or less from the time the department determined action was necessary.

(3) The owner does not respond or will not agree to the protective measures the department recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(c) If the department applies conservation measures to or disposes of property under this section, or with the agreement of the owner, unless the agreement provides otherwise, the department:

(1) Has lien on the property and on the proceeds of any disposition of the property for the costs incurred by the department.

(2) Is not liable for injury to or loss of the property if the department:

a. Had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the department, or that the property on loan was a hazard to the health and safety of the public or the department staff.

b. Exercised reasonable care in the choice and application of conservation measures.

Section 8. (a) The department may collect fees for certain services rendered by the department, including, but not limited to the following:

(1) Search and handling fees. These fees shall include, but not limited to, fees for conducting research for requests from outside the state and for handling all requests for reproducing special format materials.

(2) Records center and micrographics storage and service fees. These fees shall be collected from government agencies for storage, retrieval, and reproduction of nonpermanent records in the records center and for the security storage of microfilm. One year's notice shall be given to any agency prior to implementation of a storage fee.

(b) Fees for services shall be set by the board upon recommendation by the director and may be amended as required. Fees shall be based upon actual cost to the department for providing the services.

(c) There is created in the State Treasury a fund to be known and designated as the Archives Services Fund. Any revenue collected for services pursuant to subsection (a) shall be deposited in the State Treasury to the credit of the Archives Services Fund.

(d) The expenditure of funds collected under subsection (a) shall be used by the department to help defray expenses incurred in providing the services.

(e) No funds deposited in the State Treasury to the credit of the Archives Services Fund shall be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 (commencing with Section 41-4-80), Chapter 4, Title 41, Code of Alabama 1975, and only in the amounts and for the purposes provided by the Legislature.

(f) Funds deposited in the Archives Services Fund shall not revert to the general fund of the state but shall remain in the Archives Services Fund until expended by the department.

(g) There is appropriated from the Archives Services Fund to the department the sum of twenty-five thousand dollars (\$25,000) for the fiscal year ending September 30, 1993.

Section 9. (a) The department may establish and administer or permit establishment and administration under contract of a store to provide information and materials relating to exhibits, collections, and programs to the public. The store may produce, acquire, and sell craft products, replicas, and reproductions of artifacts and documents, and other merchandise relating to historical and cultural resources and may make a reasonable charge for the merchandise.

(b) Items purchased specifically for resale in the store are not subject to the state competitive bid process.

(c) All profits from the store shall be used for the benefit of the department.

Section 10. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 11. All laws or parts of laws which conflict with this act are repealed.

Section 12. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 8, 1992

Time: 4:20 P.M.

Act No. 92-720

H. 30 – Reps. Escott-Russell, Perdue,
Spratt, Rogers (J), Barnes,
McClain

AN ACT

To amend Section 11-43-86, Code of Alabama 1975, to increase the expense allowance of the mayor of any Class 1 city to \$1,833.33 per month; to provide that the expense allowance shall be eligible for certain treatment, both in determining retirement benefits and allowances and the required withholdings and payments into any pension or retirement system trust fund provided for any retirement benefit system in which mayors shall be entitled to participate; to supersede all laws or parts of laws in conflict; to provide for the severability of any invalid provision of the act; and to provide for the effective date of the act.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 11-43-86, Code of Alabama 1975, is amended to read as follows:

“§11-43-86.

“(a) The mayor or other chief executive officer of any Class 1 city shall be paid, in addition to the compensation provided by law for the office, the additional sum of ~~\$1,333.33~~ **\$1,833.33 per month, payable in advance on the first day of each month as an allowance for expenses incident to the office of mayor, for which the mayor shall not be required to file an accounting.**

“(b) All other provisions of law notwithstanding, the mayor may elect in writing to have the expense allowances authorized by paragraph (a) of this act and by Section 1 of Act No. 87-789 treated as subject to withholding of any employee contribution required to be paid into the trust fund provided under any pension or retirement system in which the mayor is eligible to participate. The mayor may also elect in writing within 90 days of the effective date of the act adding this subsection to pay into the pension or retirement system trust fund the required contribution on any expense allowance previously received under this section prior to the effective date of the act adding this subsection during all or any portion of the three-year period prior to the mayor’s payment election,

together with interest at the rate of eight percent per annum thereon computed from the date of receipt of the allowance to the date of payment. If either or both of the elections is made by the mayor, the expense allowances on which employee contributions are paid into retirement plan trust fund shall be considered together with all salaries received by the mayor, from which the required employee contribution was likewise withheld and paid into the retirement trust fund, to determine the amount of any retirement benefits or allowances to which the mayor may be entitled to receive as provided under the pension system upon retirement under the terms of the system.

“(c) The mayor or other chief executive officer of any city shall attend as the official representative of the city meetings and conferences in the city to which he or she is invited and which will in the opinion of such mayor or chief executive officer result in the advertisement of the city or any function or undertaking of the city. The mayor or chief executive officer shall be the sole judge of the conferences or meetings he or she should attend.

“(d) This section shall not be construed so as to prevent any mayor or other chief executive officer from being reimbursed for actual expenses incurred on or in connection with a trip on city business beyond the corporate limits of the city. However, reimbursements under this paragraph shall not accrue against the amounts authorized in paragraph (b) of this act, nor shall reimbursements of actual expenses incurred beyond the corporate limits of the city be eligible for pension system withholding or be considered in determining pension or retirement benefits or allowances.”

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved October 9, 1992

Time: 4:00 P.M.

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SECOND SPECIAL SESSION, 1992

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- Stockton Horseshoe Tournament, desig. as official st.
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- Hazardous waste tax based on toxicity, distrib., volume cap alt.,
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4, 22-30B-13 am'd., Sec. 22-30B-2.3 repealed—Act 92-658,
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SUPERINTENDENT OF EDUCATION, CITY

- Alabama Education Foundation for Kindergarten through
Grade 12 Public Schools estab., primary purpose is to promote
private giving, bd., powers, distrib. of income, investments,
perpetual trust, tax exemption—Act 92-716, 1992 2nd Sp.
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SUPERINTENDENT OF EDUCATION, COUNTY

- Alabama Education Foundation for Kindergarten through
Grade 12 Public Schools estab., primary purpose is to promote
private giving, bd., powers, distrib. of income, investments,
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SUPERINTENDENT OF EDUCATION, STATE

- Alabama Education Foundation for Kindergarten through
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TALLADEGA, CITY OF

- Talladega city clk., exempt from city civil service, Act No. 92-
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